

## EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

**[§ 2792. Renumbered § 451]****[§ 2793. Renumbered § 452]****[§ 2794. Renumbered § 453]****[§ 2795. Renumbered § 454]****[§ 2796. Renumbered § 455]****[§ 2797. Repealed. Pub. L. 104-201, div. A, title XI, § 1121(b), Sept. 23, 1996, 110 Stat. 2687]**

Section, added Pub. L. 103-337, div. A, title X, § 1074(a), Oct. 5, 1994, 108 Stat. 2861, related to unauthorized use of Defense Mapping Agency name, initials, or seal.

## EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

**[§ 2798. Renumbered § 456]****CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING**

Subchapter	Sec.
I. Military Construction .....	2801
II. Military Family Housing .....	2821
III. Administration of Military Construction and Military Family Housing. ....	2851
IV. Alternative Authority for Acquisition and Improvement of Military Housing	2871

## AMENDMENTS

1996—Pub. L. 104-106, div. B, title XXVIII, § 2801(a)(2), Feb. 10, 1996, 110 Stat. 551, added item for subchapter IV.

**SUBCHAPTER I—MILITARY CONSTRUCTION**

Sec.	
2801.	Scope of chapter; definitions.
2802.	Military construction projects.
2803.	Emergency construction.
2804.	Contingency construction.
2805.	Unspecified minor construction.
2806.	Contributions for North Atlantic Treaty Organizations Security Investment.
2807.	Architectural and engineering services and construction design.
2808.	Construction authority in the event of a declaration of war or national emergency.
2809.	Long-term facilities contracts for certain activities and services.
[2810.	Repealed.]
2811.	Repair of facilities.
2812.	Lease-purchase of facilities.
2813.	Acquisition of existing facilities in lieu of authorized construction.
2814.	Special authority for development of Ford Island, Hawaii.
2815.	Joint use military construction projects: annual evaluation.

## AMENDMENTS

2002—Pub. L. 107-314, div. A, title III, § 313(d)(2), Dec. 2, 2002, 116 Stat. 2508, struck out item 2810 “Construction projects for environmental response actions”.

2000—Pub. L. 106-398, § 1 [div. B, title XXVIII, § 2801(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-412, added item 2815.

1999—Pub. L. 106-65, div. B, title XXVIII, § 2802(a)(2), Oct. 5, 1999, 113 Stat. 848, added item 2814.

1996—Pub. L. 104-201, div. B, title XXVIII, § 2802(c)(2), Sept. 23, 1996, 110 Stat. 2787, substituted “Organizations Security Investment” for “Organization Infrastructure” in item 2806.

Pub. L. 104-106, div. A, title XV, § 1503(a)(31), Feb. 10, 1996, 110 Stat. 512, inserted period at end of item 2811.

1994—Pub. L. 103-337, div. B, title XXVIII, § 2801(b), Oct. 5, 1994, 108 Stat. 3050, substituted “Repair” for “Renovation” in item 2811.

1993—Pub. L. 103-160, div. B, title XXVIII, § 2805(a)(2), Nov. 30, 1993, 107 Stat. 1887, added item 2813.

1991—Pub. L. 102-190, div. B, title XXVIII, § 2805(a)(2), Dec. 5, 1991, 105 Stat. 1538, substituted “Long-term facilities contracts for certain activities and services” for “Test of long-term facilities contracts” in item 2809.

1989—Pub. L. 101-189, div. B, title XXVIII, § 2809(b), Nov. 29, 1989, 103 Stat. 1650, added item 2812.

1987—Pub. L. 100-26, § 7(e)(3), Apr. 21, 1987, 101 Stat. 281, redesignated item 2810 “Renovation of facilities” as item 2811.

1986—Pub. L. 99-661, div. A, title III, § 315(b), Nov. 14, 1986, 100 Stat. 3854, added item 2810 “Renovation of facilities”.

Pub. L. 99-499, title II, § 211(b)(2), Oct. 17, 1986, 100 Stat. 1726, added item 2810 “Construction projects for environmental response actions”.

1985—Pub. L. 99-167, title VIII, § 811(b), Dec. 3, 1985, 99 Stat. 991, added item 2809.

**§ 2801. Scope of chapter; definitions**

(a) The term “military construction” as used in this chapter or any other provision of law includes any construction, development, conversion, or extension of any kind carried out with respect to a military installation, whether to satisfy temporary or permanent requirements, or any acquisition of land or construction of a defense access road (as described in section 210 of title 23).

(b) A military construction project includes all military construction work, or any contribution authorized by this chapter, necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility (or to produce such portion of a complete and usable facility or improvement as is specifically authorized by law).

(c) In this chapter and chapter 173 of this title:

(1) The term “appropriate committees of Congress” means the congressional defense committees and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(2) The term “facility” means a building, structure, or other improvement to real property.

(3) The term “life-cycle cost-effective”, with respect to a project, product, or measure, means that the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and replacement costs, as estimated for the lifetime of the project, product, or measure, does not exceed the base case (current or standard) for the practice, product, or measure.

(4) The term “military installation” means a base, camp, post, station, yard, center, or

other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense, without regard to the duration of operational control.

(5) The term “Secretary concerned” includes the Secretary of Defense with respect to matters concerning the Defense Agencies.

(d) This chapter (other than sections 2830, 2835, and 2836 of this chapter) does not apply to the Coast Guard or to civil works projects of the Army Corps of Engineers.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 153; amended Pub. L. 100-26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100-180, div. A, title VI, §632(b)(1), title XII, §1231(15), div. B, subdiv. 3, title I, §2306(b), Dec. 4, 1987, 101 Stat. 1105, 1160, 1216; Pub. L. 102-484, div. A, title X, §1052(37), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 102-496, title IV, §403(b), Oct. 24, 1992, 106 Stat. 3185; Pub. L. 104-106, div. A, title XV, §1502(a)(10), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-136, div. A, title X, §1043(b)(16), div. B, title XXVIII, §2801, Nov. 24, 2003, 117 Stat. 1611, 1719; Pub. L. 109-163, div. A, title X, §1056(c)(9), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109-364, div. B, title XXVIII, §2851(b)(4), Oct. 17, 2006, 120 Stat. 2495; Pub. L. 110-181, div. B, title XXVIII, §2802(b), Jan. 28, 2008, 122 Stat. 539; Pub. L. 110-417, div. B, title XXVIII, §2801(a), Oct. 14, 2008, 122 Stat. 4719.)

#### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-181 inserted “, or any acquisition of land or construction of a defense access road (as described in section 210 of title 23)” before period at end.

Subsec. (c). Pub. L. 110-417 added par. (3) and redesignated former pars. (4), (1), (2), and (3) as (1), (2), (4), and (5), respectively.

2006—Subsec. (c). Pub. L. 109-364 inserted “and chapter 173 of this title” after “this chapter” in introductory provisions.

Subsec. (d). Pub. L. 109-163 substituted “sections 2830, 2835, and 2836 of this chapter” for “sections 2830 and 2835”.

2003—Subsec. (a). Pub. L. 108-136, §2801(a), inserted before period at end “, whether to satisfy temporary or permanent requirements”.

Subsec. (c)(2). Pub. L. 108-136, §2801(b), inserted before period at end “, without regard to the duration of operational control”.

Subsec. (c)(4). Pub. L. 108-136, §1043(b)(16), substituted “the congressional defense committees” for “the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives”.

1999—Subsec. (c)(4). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (c)(4). Pub. L. 104-106 substituted “the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the” for “the Committees on Armed Services and on Appropriations of the Senate and”.

1992—Subsec. (c)(4). Pub. L. 102-496 inserted before period at end “and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select

Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate”.

Subsec. (d). Pub. L. 102-484 substituted “sections 2830 and 2835” for “sections 2828(g) and 2830”.

1987—Subsec. (c). Pub. L. 100-26 inserted “The term” after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (1), (2), and (4) and substituted lowercase letter.

Subsec. (c)(3). Pub. L. 100-180, §1231(15), substituted “Defense Agencies” for “defense agencies”.

Subsec. (d). Pub. L. 100-180, §2306(b), substituted “(other than sections 2828(g) and 2830)” for “(other than section 2830)”.

Pub. L. 100-180, §632(b)(1), inserted “(other than section 2830)” after “This chapter”.

#### EFFECTIVE DATE

Section 12 of Pub. L. 97-214 provided:

“(a) Except as provided in subsection (b), the amendments made by this Act [see Short Title of 1982 Amendment note below] shall take effect on October 1, 1982, and shall apply to military construction projects, and to construction and acquisition of military family housing, authorized before, on, or after such date.

“(b) The amendment made by section 4 [amending section 138(f)(1) [now 114(b)] of this title] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1983.”

#### SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97-214 provided that: “This Act [see Tables for classification] may be cited as the ‘Military Construction Codification Act.’”

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### § 2802. Military construction projects

(a) The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects, land acquisitions, and defense access road projects (as described under section 210 of title 23) as are authorized by law.

(b) Authority provided by law to carry out a military construction project includes authority for—

- (1) surveys and site preparation;
- (2) acquisition, conversion, rehabilitation, and installation of facilities;
- (3) acquisition and installation of equipment and appurtenances integral to the project;
- (4) acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project; and
- (5) planning, supervision, administration, and overhead incident to the project.

(c) In determining the scope of a proposed military construction project, the Secretary concerned shall submit to the President such recommendations as the Secretary considers to be appropriate regarding the incorporation and inclusion of life-cycle cost-effective practices as an element in the project documents submitted to Congress in connection with the budget submitted pursuant to section 1105 of title 31 for the

fiscal year in which a contract is proposed to be awarded for the project.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 154; amended Pub. L. 110-181, div. B, title XXVIII, §2802(a), Jan. 28, 2008, 122 Stat. 539; Pub. L. 110-417, div. B, title XXVIII, §2801(b), Oct. 14, 2008, 122 Stat. 4719.)

#### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-181 inserted “, land acquisitions, and defense access road projects (as described under section 210 of title 23)” after “military construction projects”.

Subsec. (c). Pub. L. 110-417 added subsec. (c).

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

#### REQUIREMENTS RELATED TO PROVIDING WORLD CLASS MILITARY MEDICAL CENTERS

Pub. L. 111-383, div. B, title XXVIII, §2852, Jan. 7, 2011, 124 Stat. 4475, provided that:

“(a) UNIFIED CONSTRUCTION STANDARD FOR MILITARY CONSTRUCTION AND REPAIRS TO MILITARY MEDICAL CENTERS.—Not later than 180 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary of Defense shall establish a unified construction standard for military construction and repairs for military medical centers that provides a single standard of care. This standard shall also include—

“(1) size standards for operating rooms and patient recovery rooms; and

“(2) such other construction standards that the Secretary considers necessary to support military medical centers.

“(b) INDEPENDENT REVIEW PANEL.—

“(1) ESTABLISHMENT; PURPOSE.—The Secretary of Defense shall establish an independent advisory panel for the purpose of—

“(A) reviewing the unified construction standards established pursuant to subsection (a) to determine the standards consistency with industry practices and benchmarks for world class medical construction;

“(B) reviewing ongoing construction programs within the Department of Defense to ensure medical construction standards are uniformly applied across applicable military medical centers;

“(C) assessing the approach of the Department of Defense approach to planning and programming facility improvements with specific emphasis on—

“(i) facility selection criteria and proportional assessment system; and

“(ii) facility programming responsibilities between the Assistant Secretary of Defense for Health Affairs and the Secretaries of the military departments;

“(D) assessing whether the Comprehensive Master Plan for the National Capital Region Medical, dated April 2010, is adequate to fulfill statutory requirements, as required by section 2714 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Public Law 111-84; 123 Stat. 2656), to ensure that the facilities and organizational structure described in the plan result in world class military medical centers in the National Capital Region; and

“(E) making recommendations regarding any adjustments of the master plan referred to in subparagraph (D) that are needed to ensure the provision of world class military medical centers and delivery system in the National Capital Region.

“(2) MEMBERS.—

“(A) APPOINTMENTS BY SECRETARY.—The panel shall be composed of such members as determined by the Secretary of Defense, except that the Secretary shall include as members—

“(i) medical facility design experts;

“(ii) military healthcare professionals;

“(iii) representatives of premier health care centers in the United States; and

“(iv) former retired senior military officers with joint operational and budgetary experience.

“(B) CONGRESSIONAL APPOINTMENTS.—The chairmen and ranking members of the Committees on the Armed Services of the Senate and House of Representatives may each designate one member of the panel.

“(C) TERM.—Members of the panel may serve on the panel until the termination date specified in paragraph (7).

“(D) COMPENSATION.—While performing duties on behalf of the panel, a member and any adviser referred to in paragraph (4) shall be reimbursed under Government travel regulations for necessary travel expenses.

“(3) MEETINGS.—The panel shall meet not less than quarterly. The panel or its members may make other visits to military treatment centers and military headquarters in connection with the duties of the panel.

“(4) STAFF AND ADVISORS.—The Secretary of Defense shall provide necessary administrative staff support to the panel. The panel may call in advisers for consultation.

“(5) REPORTS.—

“(A) INITIAL REPORT.—Not later than 120 days after the first meeting of the panel, the panel shall submit to the Secretary of Defense a written report containing—

“(i) an assessment of the adequacy of the plan of the Department of Defense to address the items specified in subparagraphs (A) through (E) of paragraph (1) relating to the purposes of the panel; and

“(ii) the recommendations of the panel to improve the plan.

“(B) ADDITIONAL REPORTS.—Not later than February 1, 2011, and each February 1 thereafter until termination of the panel, the panel shall submit to the Secretary of Defense a report on the findings and recommendations of the panel to address any deficiencies identified by the panel.

“(6) ASSESSMENT OF RECOMMENDATIONS.—Not later than 30 days after the date of the submission of each report under paragraph (5), the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report including—

“(A) a copy of the panel’s assessment;

“(B) an assessment by the Secretary of the findings and recommendations of the panel; and

“(C) the plans of the Secretary for addressing such findings and recommendations.

“(7) TERMINATION.—The panel shall terminate on September 30, 2015.

“(c) DEFINITIONS.—In this section:

“(1) NATIONAL CAPITAL REGION.—The term ‘National Capital Region’ has the meaning given the term in section 2674(f) of title 10, United States Code.

“(2) WORLD CLASS MILITARY MEDICAL CENTER.—The term ‘world class military medical center’ has the meaning given the term ‘world class military medical facility’ by the National Capital Region Base Realignment and Closure Health Systems Advisory Subcommittee of the Defense Health Board in appendix B of the report titled ‘Achieving World Class—An Independent Review of the Design Plans for the Walter Reed National Military Medical Center and the Fort Belvoir Community Hospital’ and published in May 2009, as required by section 2721 of the Military Construction Authorization Act for Fiscal Year 2009 (division B of Public Law 110-417; 122 Stat. 4716).”

#### DAMAGE TO AVIATION FACILITIES CAUSED BY ALKALI SILICA REACTIVITY

Pub. L. 106-398, §1 [[div. A], title III, §389], Oct. 30, 2000, 114 Stat. 1654, 1654A-89, provided that:

“(a) ASSESSMENT OF DAMAGE AND PREVENTION AND MITIGATION TECHNOLOGY.—The Secretary of Defense shall require the Secretaries of the military departments to assess—

“(1) the damage caused to aviation facilities of the Armed Forces by alkali silica reactivity; and

“(2) the availability of technologies capable of preventing, treating, or mitigating alkali silica reactivity in hardened concrete structures and pavements.

“(b) EVALUATION OF TECHNOLOGIES.—(1) Taking into consideration the assessment under subsection (a), the Secretary of each military department may conduct a demonstration project at a location selected by the Secretary concerned to test and evaluate the effectiveness of technologies intended to prevent, treat, or mitigate alkali silica reactivity in hardened concrete structures and pavements.

“(2) The Secretary of Defense shall ensure that the locations selected for the demonstration projects represent the diverse operating environments of the Armed Forces.

“(c) NEW CONSTRUCTION.—The Secretary of Defense shall develop specific guidelines for appropriate testing and use of lithium salts to prevent alkali silica reactivity in new construction of the Department of Defense.

“(d) COMPLETION OF ASSESSMENT AND DEMONSTRATION.—The assessment conducted under subsection (a) and the demonstration projects, if any, conducted under subsection (b) shall be completed not later than September 30, 2006.

“(e) DELEGATION OF AUTHORITY.—The authority to conduct the assessment under subsection (a) may be delegated only to the Chief of Engineers of the Army, the Commander of the Naval Facilities Engineering Command, and the Civil Engineer of the Air Force.

“(f) LIMITATION ON EXPENDITURES.—The Secretary of Defense and the Secretaries of the military departments may not expend more than a total of \$5,000,000 to conduct both the assessment under subsection (a) and all of the demonstration projects under subsection (b).”

#### REPORTS RELATING TO MILITARY CONSTRUCTION FOR FACILITIES SUPPORTING NEW WEAPON SYSTEMS

Pub. L. 102-190, div. B, title XXVIII, §2868, Dec. 5, 1991, 105 Stat. 1562, as amended by Pub. L. 108-136, div. A, title X, §1031(c)(2), Nov. 24, 2003, 117 Stat. 1604, provided that:

“(a) REQUIREMENT.—Not later than 30 days after the date on which a decision is made selecting the site or sites for the permanent basing of a new weapon system, the Secretary of Defense shall submit to Congress a report describing—

“(1) the site or sites selected or planned for permanent basing of the planned force of that weapon system;

“(2) the rationale for selecting such site or sites; and

“(3) the military construction activities proposed for each such site.

“(b) NEW WEAPON SYSTEM DEFINED.—For purposes of this section, the term ‘new weapon system’ means any military aircraft or major naval combatant vessel for which a complete permanent basing plan has not been publicly announced before the date of the enactment of this Act [Dec. 5, 1991].”

### § 2803. Emergency construction

(a) Subject to subsections (b) and (c), the Secretary concerned may carry out a military construction project not otherwise authorized by law if the Secretary determines (1) that the project is vital to the national security or to the protection of health, safety, or the quality of the environment, and (2) that the requirement for the project is so urgent that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of

health, safety, or environmental quality, as the case may be.

(b) When a decision is made to carry out a military construction project under this section, the Secretary concerned shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, (2) the justification for carrying out the project under this section, and (3) a statement of the source of the funds to be used to carry out the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(c)(1) The maximum amount that the Secretary concerned may obligate in any fiscal year under this section is \$50,000,000.

(2) A project carried out under this section shall be carried out within the total amount of funds appropriated for military construction that have not been obligated.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 154; amended Pub. L. 102-190, div. B, title XXVIII, §§2803, 2870(2), Dec. 5, 1991, 105 Stat. 1537, 1562; Pub. L. 102-484, div. A, title X, §1053(9), Oct. 23, 1992, 106 Stat. 2502; Pub. L. 108-136, div. A, title X, §1031(a)(34), div. B, title XXVIII, §2802, Nov. 24, 2003, 117 Stat. 1600, 1719; Pub. L. 109-364, div. B, title XXVIII, §2801, Oct. 17, 2006, 120 Stat. 2466.)

#### AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109-364 substituted “\$50,000,000” for “\$45,000,000”.

2003—Subsec. (b). Pub. L. 108-136, §1031(a)(34), inserted before period at end “or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

Subsec. (c)(1). Pub. L. 108-136, §2802, substituted “\$45,000,000” for “\$30,000,000”.

1992—Subsec. (b). Pub. L. 102-484 made technical amendment to directory language of Pub. L. 102-190, §2870(2). See 1991 Amendment note below.

1991—Subsec. (a). Pub. L. 102-190, §2803, substituted “or to the protection of health, safety, or the quality of the environment, and” for “, and” in cl. (1) and inserted “or the protection of health, safety, or environmental quality, as the case may be” before period at end of cl. (2).

Subsec. (b). Pub. L. 102-190, §2870(2), as amended by Pub. L. 102-484, struck out “, or after each such committee has approved the project, if the committee approves the project before the end of that period” after “by such committees”.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 1053(9) of Pub. L. 102-484 provided that the amendment made by that section is effective Dec. 5, 1991.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### § 2804. Contingency construction

(a) Within the amount appropriated for such purpose, the Secretary of Defense may carry out

a military construction project not otherwise authorized by law, or may authorize the Secretary of a military department to carry out such a project, if the Secretary of Defense determines that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or national interest.

(b) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, and (2) the justification for carrying out the project under this section. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by such committees or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 102-190, div. B, title XXVIII, §2870(3), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 108-136, div. A, title X, §1031(a)(35), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 109-163, div. B, title XXVIII, §2801(a), Jan. 6, 2006, 119 Stat. 3504.)

#### AMENDMENTS

2006—Subsec. (b). Pub. L. 109-163 substituted “14-day period” for “21-day period” and “seven-day period” for “14-day period”.

2003—Subsec. (b). Pub. L. 108-136 inserted before period at end “or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

1991—Subsec. (b). Pub. L. 102-190 struck out before period at end “, or after each such committee has approved the project, if the committees approve the project before the end of that period”.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### § 2805. Unspecified minor construction

(a) **AUTHORITY TO CARRY OUT UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.**—(1) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law.

(2) An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than \$2,000,000. However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, an unspecified minor military construction project may have an approved cost equal to or less than \$3,000,000.

(b) **APPROVAL AND CONGRESSIONAL NOTIFICATION.**—(1) An unspecified minor military construction project costing more than \$750,000 may not be carried out under this section unless approved in advance by the Secretary concerned.

This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(c) **USE OF OPERATION AND MAINTENANCE FUNDS.**—(1) Except as provided in paragraph (2), the Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than—

(A) \$1,500,000, in the case of an unspecified minor military construction project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or

(B) \$750,000, in the case of any other unspecified minor military construction project.

(2) The limitations specified in paragraph (1) shall not apply to an unspecified minor military construction project if the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(d) **LABORATORY REVITALIZATION.**—(1) For the revitalization and recapitalization of laboratories owned by the United States and under the jurisdiction of the Secretary concerned, the Secretary concerned may obligate and expend—

(A) from appropriations available to the Secretary concerned for operation and maintenance, amounts necessary to carry out an unspecified minor military construction project costing not more than \$2,000,000; or

(B) from appropriations available to the Secretary concerned for military construction not otherwise authorized by law or from funds authorized to be made available under section 219(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417; 10 U.S.C. 2358 note), amounts necessary to carry out an unspecified minor military construction project costing not more than \$4,000,000.

(2) For an unspecified minor military construction project conducted pursuant to this subsection, \$2,000,000 shall be deemed to be the amount specified in subsection (b)(1) regarding when advance approval of the project by the Secretary concerned and congressional notification is required. The Secretary of Defense shall establish procedures for the review and approval of requests from the Secretary of a military department to carry out a construction project under this subsection.

(3) Not later than February 1, 2010, the Secretary of Defense shall submit to the congres-

sional defense committees a report on the use of the authority provided by this subsection. The report shall include a list and description of the construction projects carried out under this subsection, including the location and cost of each project.

(4) In this subsection, the term “laboratory” includes—

(A) a research, engineering, and development center; and

(B) a test and evaluation activity.

(5) The authority to carry out a project under this subsection expires on September 30, 2012.

(e) PROHIBITION ON USE FOR NEW HOUSING UNITS.—Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 99–167, title VIII, §809, Dec. 3, 1985, 99 Stat. 989; Pub. L. 99–661, div. B, title VII, §2702(a), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100–180, div. B, subd. 3, title I, §2310, Dec. 4, 1987, 101 Stat. 1217; Pub. L. 101–510, div. A, title XIII, §1301(16), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–190, div. B, title XXVIII, §2807, 2870(4), Dec. 5, 1991, 105 Stat. 1540, 1563; Pub. L. 104–106, div. B, title XXVIII, §§2811(a), 2812, Feb. 10, 1996, 110 Stat. 552; Pub. L. 104–201, div. B, title XXVIII, §2801(a), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 105–85, div. B, title XXVIII, §2801, Nov. 18, 1997, 111 Stat. 1989; Pub. L. 107–107, div. B, title XXVIII, §2801, Dec. 28, 2001, 115 Stat. 1305; Pub. L. 108–136, div. A, title X, §1031(a)(36), Nov. 24, 2003, 117 Stat. 1600; Pub. L. 110–181, div. B, title XXVIII, §§2803, 2804, Jan. 28, 2008, 122 Stat. 539; Pub. L. 111–84, div. B, title XXVIII, §2801(a)(1), (2), (b), Oct. 28, 2009, 123 Stat. 2660.)

#### AMENDMENTS

2009—Subsec. (a). Pub. L. 111–84, §2801(a)(1), substituted “Within” for “Except as provided in paragraph (2), within” in par. (1), redesignated the second and third sentences of par. (1) as par. (2), and struck out former par. (2) which read as follows: “A Secretary may not use more than \$5,000,000 for exercise-related unspecified minor military construction projects coordinated or directed by the Joint Chiefs of Staff outside the United States during any fiscal year.”

Subsec. (c). Pub. L. 111–84, §2801(a)(2), substituted “paragraph (2)” for “paragraphs (2) and (3)” in par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: “The authority provided in paragraph (1) may not be used with respect to any exercise-related unspecified minor military construction project coordinated or directed by the Joint Chiefs of Staff outside the United States.”

Subsec. (d)(1)(B). Pub. L. 111–84, §2801(b)(1), inserted “or from funds authorized to be made available under section 219(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 10 U.S.C. 2358 note)” after “authorized by law”.

Subsec. (d)(3) to (6). Pub. L. 111–84, §2801(b)(2), (3), redesignated pars. (4) to (6) as (3) to (5), respectively, and struck out former par. (3) which read as follows: “For purposes of this subsection, the total amount allowed to be applied in any one fiscal year to projects at any one laboratory shall be limited to the larger of the amounts applicable under paragraph (1).”

2008—Subsec. (a). Pub. L. 110–181, §2804(b)(1), inserted subsec. heading.

Subsec. (a)(1). Pub. L. 110–181, §2803, substituted “\$2,000,000” for “\$1,500,000”.

Subsecs. (b), (c). Pub. L. 110–181, §2804(b)(2), (3), inserted subsec. headings.

Subsecs. (d), (e). Pub. L. 110–181, §2804(a), (b)(4), added subsec. (d), redesignated former subsec. (d) as (e), and inserted subsec. (e) heading.

2003—Subsec. (b)(2). Pub. L. 108–136 inserted before period at end “or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

2001—Subsec. (b)(1). Pub. L. 107–107, §2801(a), substituted “\$750,000” for “\$500,000”.

Subsec. (c)(1)(A). Pub. L. 107–107, §2801(b)(1), substituted “\$1,500,000” for “\$1,000,000”.

Subsec. (c)(1)(B). Pub. L. 107–107, §2801(b)(2), substituted “\$750,000” for “\$500,000”.

1997—Subsec. (a)(1). Pub. L. 105–85, §2801(c)(1), substituted “unspecified minor military construction projects” for “minor military construction projects”, “An unspecified minor” for “A minor”, and “an unspecified minor” for “a minor”.

Subsec. (b)(1). Pub. L. 105–85, §2801(c)(2), substituted “An unspecified minor” for “A minor”.

Pub. L. 105–85, §2801(a), inserted at end “This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.”

Subsec. (b)(2). Pub. L. 105–85, §2801(c)(3), substituted “an unspecified minor” for “a minor”.

Subsec. (c)(1). Pub. L. 105–85, §2801(c)(4), substituted “unspecified minor military” for “unspecified military” wherever appearing.

Pub. L. 105–85, §2801(b)(1), substituted “paragraphs (2) and (3)” for “paragraph (2)” in introductory provisions.

Subsec. (c)(2). Pub. L. 105–85, §2801(c)(4), substituted “unspecified minor military” for “unspecified military”.

Subsec. (c)(3). Pub. L. 105–85, §2801(b)(2), added par. (3).

1996—Subsec. (a)(1). Pub. L. 104–106, §2812, in second sentence, struck out “(1) that is for a single undertaking at a military installation, and (2)” after “is a military construction project”.

Pub. L. 104–106, §2811(a)(1), inserted at end “However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, a minor military construction project may have an approved cost equal to or less than \$3,000,000.”

Subsec. (c)(1). Pub. L. 104–106, §2811(a)(2), substituted “not more than—” for “not more than \$300,000.” and added subpars. (A) and (B).

Subsec. (c)(1)(B). Pub. L. 104–201 substituted “\$500,000” for “\$300,000”.

1991—Subsec. (a)(1). Pub. L. 102–190, §2807(a), substituted “\$1,500,000” for “\$1,000,000”.

Subsec. (b)(2). Pub. L. 102–190, §2870(4), in second sentence struck out “(A)” after “carried out only” and “, or (B) after each such committee approves the project, if the committees approve the project before the end of that period” before period at end.

Subsec. (c)(1). Pub. L. 102–190, §2807(b), substituted “\$300,000” for “\$200,000”.

1990—Subsec. (b)(3). Pub. L. 101–510 struck out par. (3) which read as follows: “A project for the relocation of any activity from one installation to another that involves 25 or more full-time civilian employees of the Department of Defense but that is not subject to paragraph (1) may not be carried out under the authority of this section until the appropriate committees of Congress have been notified by the Secretary concerned of the intent to carry out such relocation under the authority of this section.”

1987—Subsec. (a). Pub. L. 100–180, §2310(b), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), within” for “Within”, and added par. (2).

Subsec. (c). Pub. L. 100–180, §2310(a), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), the” for “The”, and added par. (2).

1986—Subsec. (a). Pub. L. 99-661, §2702(a)(1), substituted “\$1,000,000” for “the amount specified by law as the maximum amount for a minor military construction project”.

Subsec. (b)(1). Pub. L. 99-661, §2702(a)(2), substituted “\$500,000” for “50 percent of the amount specified by law as the maximum amount for a minor military construction project”.

Subsec. (c). Pub. L. 99-661, §2702(a)(3), substituted “\$200,000” for “20 percent of the amount specified by law as the maximum amount for a minor military construction project”.

1985—Subsec. (a). Pub. L. 99-167, §809(1), inserted “an amount equal to 125 percent of”.

Subsec. (c). Pub. L. 99-167, §809(2), substituted “The” for “Only funds authorized for minor construction projects may be used to accomplish unspecified minor construction projects, except that the”.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

#### RELATION TO OTHER AUTHORITIES

Pub. L. 108-136, div. B, title XXVIII, §2808(e), Nov. 24, 2003, 117 Stat. 1724, provided that: “The temporary authority provided by this section [117 Stat. 1723], and the limited authority provided by section 2805(c) of title 10, United States Code, to use appropriated funds available for operation and maintenance to carry out a construction project are the only authorities available to the Secretary of Defense and the Secretaries of the military departments to use appropriated funds available for operation and maintenance to carry out construction projects.”

#### DEPARTMENT OF DEFENSE LABORATORY REVITALIZATION DEMONSTRATION PROGRAM

Pub. L. 104-106, div. B, title XXVIII, §2892, Feb. 10, 1996, 110 Stat. 590, as amended by Pub. L. 105-261, div. B, title XXVIII, §2871, Oct. 17, 1998, 112 Stat. 2225; Pub. L. 108-375, div. B, title XXVIII, §2891, Oct. 28, 2004, 118 Stat. 2154, provided that:

“(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a program (to be known as the ‘Department of Defense Laboratory Revitalization Demonstration Program’) for the revitalization of Department of Defense laboratories. Under the program, the Secretary may carry out minor military construction projects in accordance with subsection (b) and other applicable law to improve Department of Defense laboratories covered by the program.

“(b) INCREASED MAXIMUM AMOUNTS APPLICABLE TO MINOR CONSTRUCTION PROJECTS.—For purpose of any military construction project carried out under the program—

“(1) the amount provided in the second sentence of subsection (a)(1) of section 2805 of title 10, United States Code, shall be deemed to be \$3,000,000;

“(2) the amount provided in subsection (b)(1) of such section shall be deemed to be \$1,500,000; and

“(3) the amount provided in subsection (c)(1)(B) of such section shall be deemed to be \$1,000,000.

“(c) PROGRAM REQUIREMENTS.—(1) Not later than 30 days before commencing the program, the Secretary shall establish procedures for the review and approval of requests from Department of Defense laboratories for construction under the program.

“(2) The laboratories at which construction may be carried out under the program may not include Department of Defense laboratories that are contractor-owned.

“(d) REPORT.—Not later than February 1, 2003, the Secretary shall submit to Congress a report on the program. The report shall include the Secretary’s conclusions and recommendation regarding the desirability of making the authority set forth under subsection (b) permanent.

“(e) EXCLUSIVITY OF PROGRAM.—Nothing in this section may be construed to limit any other authority provided by law for any military construction project at a Department of Defense laboratory covered by the program.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘laboratory’ includes—

“(A) a research, engineering, and development center;

“(B) a test and evaluation activity owned, funded, and operated by the Federal Government through the Department of Defense; and

“(C) a supporting facility of a laboratory.

“(2) The term ‘supporting facility’, with respect to a laboratory, means any building or structure that is used in support of research, development, test, and evaluation at the laboratory.

“(g) EXPIRATION OF AUTHORITY.—The Secretary may not commence a construction project under the program after September 30, 2005.”

#### INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Maximum amount of \$1,000,000 for unspecified minor military construction project under this section during the period beginning Oct. 1, 1982, and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(1) of Pub. L. 97-214, set out as a note under section 2828 of this title.

#### § 2806. Contributions for North Atlantic Treaty Organizations Security Investment

(a) Within amounts authorized by law for such purpose, the Secretary of Defense may make contributions for the United States share of the cost of multilateral programs for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area.

(b) Funds may not be obligated or expended in connection with the North Atlantic Treaty Organization Security Investment program in any year unless such funds have been authorized by law for such program.

(c)(1) The Secretary may make contributions in excess of the amount appropriated for contribution under subsection (a) if the amount of the contribution in excess of that amount does not exceed 200 percent of the amount specified by section 2805(a) of this title as the maximum amount for a minor military construction project.

(2) If the Secretary determines that the amount appropriated for contribution under subsection (a) in any fiscal year must be exceeded by more than the amount authorized under paragraph (1), the Secretary may make contributions in excess of such amount, but not in excess of 125 percent of the amount appropriated (A) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of the funds to be used for the increase, and (B) after a period of 21 days has elapsed from the date of receipt of the report or, if earlier, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 97-321, title VIII,

§ 805(b)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99-661, div. B, title V, § 2503(a), Nov. 14, 1986, 100 Stat. 4039; Pub. L. 100-26, § 7(f)(1), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102-190, div. B, title XXVIII, § 2870(5), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 104-201, div. B, title XXVIII, § 2802(a), (c)(1), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 111-84, div. B, title XXVIII, § 2801(a)(3), Oct. 28, 2009, 123 Stat. 2660; Pub. L. 111-383, div. B, title XXVIII, § 2803(b), Jan. 7, 2011, 124 Stat. 4459.)

#### AMENDMENTS

2011—Subsec. (c)(2)(B). Pub. L. 111-383 inserted before period at end “or, if earlier, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title”.

2009—Subsec. (c)(1). Pub. L. 111-84 substituted “section 2805(a)” for “section 2805(a)(2)”.

1996—Pub. L. 104-201, § 2802(c)(1), substituted “Organizations Security Investment” for “Organization Infrastructure” in section catchline.

Subsec. (b). Pub. L. 104-201, § 2802(a), substituted “Security Investment program” for “Infrastructure program”.

1991—Subsec. (c)(2)(B). Pub. L. 102-190 substituted “after” for “after either” and struck out before period at end “or after each such committee has indicated approval of the increased contribution”.

1987—Subsec. (c)(1). Pub. L. 100-26 substituted “specified by section 2805(a)(2) of this title” for “specified by law”.

1986—Subsec. (a). Pub. L. 99-661 inserted “and for related expenses” after “headquarters”.

1982—Pub. L. 97-321 substituted “Infrastructure” for “infrastructure” in section catchline.

#### CHANGE OF NAME

Section 2802(b) of Pub. L. 104-201 provided that: “Any reference to the North Atlantic Treaty Organization Infrastructure program in any Federal law, Executive order, regulation, delegation of authority, or document of or pertaining to the Department of Defense shall be deemed to refer to the North Atlantic Treaty Organization Security Investment program.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 2503(b) of Pub. L. 99-661 provided that: “The amendment made by subsection (a) [amending this section] shall apply only with respect to contributions made with funds appropriated for fiscal years after fiscal year 1986.”

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

#### RESTRICTION ON CERTAIN FUNDING

Section 2504 of Pub. L. 99-661 prohibited Secretary of Defense from obligating or expending any funds after fiscal year 1987 with respect to NATO infrastructure program under this section until Secretary submitted to Committees on Armed Services of Senate and House (1) a comprehensive master plan for establishing adequate active defenses for air bases in Europe at which operations of United States aircraft are planned, sites in Europe used by United States for logistic support of NATO or for prepositioned overseas matériel configured to unit sets, and (2) a report containing a certification by Secretary that sufficient funds have been budgeted by Department of Defense in fiscal year 1988 five-year defense plan to meet objectives of such comprehensive master plan.

### § 2807. Architectural and engineering services and construction design

(a) Within amounts appropriated for military construction and military family housing, the

Secretary concerned may obtain architectural and engineering services and may carry out construction design in connection with military construction projects, family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are not otherwise authorized by law. Amounts available for such purposes may be used for construction management of projects that are funded by foreign governments directly or through international organizations and for which elements of the armed forces of the United States are the primary user.

(b) In the case of architectural and engineering services and construction design to be undertaken under subsection (a) for which the estimated cost exceeds \$1,000,000, the Secretary concerned shall notify the appropriate committees of Congress of the scope of the proposed project and the estimated cost of such services before the initial obligation of funds for such services. The Secretary may then obligate funds for such services only after the end of the 21-day period beginning on the date on which the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(c) If the Secretary concerned determines that the amount authorized for activities under subsection (a) in any fiscal year must be increased the Secretary may proceed with activities at such higher level (1) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of funds to be used for the increase, and (2) after a period of 21 days has elapsed from the date of receipt of the report or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(d) For architectural and engineering services and construction design related to military construction and family housing projects, the Secretaries of the military departments may incur obligations for contracts or portions of contracts using military construction and family housing appropriations from different fiscal years to the extent that those appropriations are available for obligation.

(Added Pub. L. 97-214, § 2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 98-115, title VIII, § 804, Oct. 11, 1983, 97 Stat. 785; Pub. L. 99-661, div. B, title VII, §§ 2702(b), 2712(a), Nov. 14, 1986, 100 Stat. 4040, 4041; Pub. L. 102-190, div. B, title XXVIII, § 2870(6), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 105-261, div. B, title XXVIII, § 2801, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 108-136, div. A, title X, § 1031(a)(37), Nov. 24, 2003, 117 Stat. 1601.)

#### AMENDMENTS

2003—Subsec. (b). Pub. L. 108-136, § 1031(a)(37)(A), substituted “\$1,000,000” for “\$500,000”, struck out “not less than 21 days” after “of such services”, and inserted last sentence.

Subsec. (c)(2). Pub. L. 108-136, § 1031(a)(37)(B), inserted before period at end “or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the



report is provided in an electronic medium pursuant to section 480 of this title”.

1998—Subsec. (b). Pub. L. 105-261, §2801(a), substituted “\$500,000” for “\$300,000”.

Subsec. (d). Pub. L. 105-261, §2801(b), substituted “architectural and engineering services and construction design” for “study, planning, design, architectural, and engineering services”.

1991—Subsec. (c)(2). Pub. L. 102-190 substituted “after” for “after either” and struck out before period at end “or after each such committee has indicated approval of the increased level of activity”.

1986—Subsec. (b). Pub. L. 99-661, §2702(b), substituted “\$300,000” for “the maximum amount specified by law for the purposes of this section”.

Subsec. (d). Pub. L. 99-661, §2712(a), added subsec. (d).

1983—Subsec. (a). Pub. L. 98-115 substituted “Within amounts appropriated for military construction and military family housing” for “Within amounts appropriated for such purposes” and inserted “, family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are” after “in connection with military construction projects”.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 2712(b) of Pub. L. 99-661 provided that: “The amendment made by subsection (a) [amending this section] shall apply only to funds appropriated for fiscal years after fiscal year 1985.”

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

#### ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN CONTRACTS FOR MILITARY CONSTRUCTION PROJECTS

Pub. L. 98-212, title VII, §796, Dec. 8, 1983, 97 Stat. 1455, provided that: “No funds appropriated for the Departments of Defense, Army, Navy, or the Air Force shall be obligated by their respective Secretaries for architectural and engineering services and construction design contracts for Military Construction projects in the amount of \$85,000 and over, unless competition for such contracts is open to all firms regardless of size in accordance with 40 U.S.C. §541, et seq. [now chapter 11 of Title 40, Public Buildings, Property, and Works.]”

#### SMALL BUSINESS SET-ASIDE FOR ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN

Section 806 of Pub. L. 98-115 provided that:

“(a) The Secretary of Defense shall conduct a comprehensive review of current policies and practices of the Department of Defense with regard to the award of contracts for architectural and engineering services and construction design for military construction projects. The Secretary shall conduct such review with a view to determining whether current policies and practices of the Department of Defense result in a reasonable distribution of such contracts to firms of all sizes throughout the architect-engineer community.

“(b) Upon the completion of such review, the Secretary shall modify current policies and practices of the Department to the extent necessary to ensure—

“(1) that small business concerns (as defined in section 3 of the Small Business Act [15 U.S.C. 632]) are assured of a reasonable share of such contracts; and

“(2) that large architect-engineer firms are not precluded from competing for such contracts when the estimated amount of such contracts is greater than a reasonable threshold amount prescribed by the Secretary.

“(c) Not later than March 1, 1984, the Secretary shall submit to the appropriate committees of Congress a written report on the results of the review required by subsection (a) and on any changes made to current policies and practices as required by subsection (b).

“(d) For the purposes of this section:

“(1) The term ‘reasonable share’ means an appropriate percentage share of all contracts referred to in subsection (a) as determined by the Secretary of Defense after consultation with the Administrator [sic] of the Small Business Administration and representatives of the architect-engineer community.

“(2) The term ‘reasonable threshold amount’ means an appropriate estimated contract dollar amount determined by the Secretary of Defense after consultation with the Administrator of the Small Business Administration and representatives of the architect-engineer community.”

#### INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Amounts of \$300,000 or more for contracts for architectural and engineering services or construction design subject to the reporting requirement under this section during the period beginning on Oct. 1, 1982, and ending on the date of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(2) of Pub. L. 97-214, set out as a note under section 2828 of this title.

#### § 2808. Construction authority in the event of a declaration of war or national emergency

(a) In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces. Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.

(b) When a decision is made to undertake military construction projects authorized by this section, the Secretary of Defense shall notify the appropriate committees of Congress of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.

(c) The authority described in subsection (a) shall terminate with respect to any war or national emergency at the end of the war or national emergency.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 157.)

#### REFERENCES IN TEXT

The National Emergencies Act (50 U.S.C. 1601 et seq.), referred to in subsec. (a), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97-99, title IX, §903, Dec. 23, 1981, 95 Stat. 1382, which was set out as a note under section 140 [now 127] of this title, prior to repeal by Pub. L. 97-214, §7(18).

## EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

## EXECUTIVE ORDER NO. 12734

Ex. Ord. No. 12734, Nov. 14, 1990, 55 F.R. 48099, which related to national emergency construction authority, was revoked by Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055, listed in a table under section 1701 of Title 50, War and National Defense.

## EX. ORD. NO. 13235. NATIONAL EMERGENCY CONSTRUCTION AUTHORITY

Ex. Ord. No. 13235, Nov. 16, 2001, 66 F.R. 58343, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, I declared a national emergency that requires the use of the Armed Forces of the United States, by Proclamation 7463 of September 14, 2001 [50 U.S.C. 1621 note], because of the terrorist attacks on the World Trade Center and the Pentagon, and because of the continuing and immediate threat to the national security of the United States of further terrorist attacks. To provide additional authority to the Department of Defense to respond to that threat, and in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), I hereby order that the emergency construction authority at 10 U.S.C. 2808 is invoked and made available in accordance with its terms to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

GEORGE W. BUSH.

**§ 2809. Long-term facilities contracts for certain activities and services**

(a) SUBMISSION AND AUTHORIZATION OF PROPOSED PROJECTS.—The Secretary concerned may enter into a contract for the procurement of services in connection with the construction, management, and operation of a facility on or near a military installation for the provision of an activity or service described in subsection (b) if—

(1) the Secretary concerned has identified the proposed project for that facility in the budget material submitted to Congress by the Secretary of Defense in connection with the budget submitted pursuant to section 1105 of title 31 for the fiscal year in which the contract is proposed to be awarded;

(2) the Secretary concerned has determined that the services to be provided at that facility can be more economically provided through the use of a long-term contract than through the use of conventional means; and

(3) the project has been authorized by law.

(b) AUTHORIZED PURPOSES OF CONTRACT.—The activities and services referred to in subsection (a) are as follows:

- (1) Child care services.
- (2) Utilities, including potable and waste water treatment services.
- (3) Depot supply activities.
- (4) Troop housing.
- (5) Transient quarters.
- (6) Hospital or medical facilities.
- (7) Other logistic and administrative services, other than depot maintenance.

(c) CONDITIONS ON OBLIGATION OF FUNDS.—A contract entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment given under the authority of this section does not constitute an obligation of the United States.

(d) COMPETITIVE PROCEDURES.—Each contract entered into under this section shall be awarded through the use of competitive procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary concerned shall solicit bids or proposals for a contract for each project that has been authorized by law.

(e) TERM OF CONTRACT.—A contract under this section may be for any period not in excess of 32 years, excluding the period for construction.

(f) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into under this section until—

(1) the Secretary concerned submits to the appropriate committees of Congress, in writing, a justification of the need for the facility for which the contract is to be awarded and an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same facility; and

(2) a period of 21 days has expired following the date on which the justification and the economic analysis are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 99-167, title VIII, § 811(a), Dec. 3, 1985, 99 Stat. 990; amended Pub. L. 99-661, div. A, title XIII, § 1343(a)(20), div. B, title VII, § 2711, Nov. 14, 1986, 100 Stat. 3994, 4041; Pub. L. 100-180, div. B, subdiv. 3, title I, § 2302(a), (b), Dec. 4, 1987, 101 Stat. 1215; Pub. L. 100-456, div. B, title XXVIII, § 2801, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101-189, div. B, title XXVIII, § 2803, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102-190, div. B, title XXVIII, § 2805(a)(1), Dec. 5, 1991, 105 Stat. 1537; Pub. L. 108-136, div. A, title X, § 1031(a)(38), Nov. 24, 2003, 117 Stat. 1601.)

## AMENDMENTS

2003—Subsec. (f)(2). Pub. L. 108-136 struck out “calendar” after “21” and inserted before period at end “or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title”.

1991—Pub. L. 102-190 substituted section catchline for one which read “Test of long-term facilities contracts”

and amended text generally, substituting present provisions for provisions authorizing contracts for construction, management, and operation of facilities on or near military installations for the provision of certain enumerated activities or services, setting out procedures, terms, and other limits for such contracts, providing that no more than 5 contracts may be entered into under this section other than contracts for child care centers, and providing that authority to enter into such contracts was to expire on Sept. 30, 1991.

1989—Subsec. (a)(1)(B)(ii). Pub. L. 101-189, § 2803(1), substituted “Utilities, including potable” for “Potable”.

Subsec. (b). Pub. L. 101-189, § 2803(2), substituted “activities and services described in clause (i) or (ii) of subsection (a)(1)(B)” for “child care centers”.

Subsec. (c). Pub. L. 101-189, § 2803(3), substituted “1991” for “1989”.

1988—Subsec. (a)(3). Pub. L. 100-456 substituted “32” for “20”.

1987—Subsec. (a)(1)(B)(vi), (vii). Pub. L. 100-180, § 2302(a), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsec. (c). Pub. L. 100-180, § 2302(b), substituted “1989” for “1987”.

1986—Subsec. (a)(1). Pub. L. 99-661, § 2711, amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The Secretary concerned may enter into a contract for the construction, management, and operation of a facility on or near a military installation in the United States for the provision of child care services, waste water treatment, or depot supply activities in a case in which the Secretary concerned determines that the facility can be more efficiently and more economically provided under a long-term contract than by other appropriate means.”

Pub. L. 99-661, § 1343(a)(20)(A), substituted “a contract” for “contracts”, “a facility” for “facilities”, “a military installation” for “military installations”, “a case” for “cases”, “facility” for “facilities”, and “a long-term contract” for “long-term contracts” and inserted a comma after “waste water treatment”.

Subsec. (a)(2). Pub. L. 99-661, § 1343(a)(20)(B), substituted “this section” for “subsection (a)”.

Subsec. (a)(3). Pub. L. 99-661, § 1343(a)(20)(C), substituted “20” for “twenty”.

Subsec. (a)(4)(A). Pub. L. 99-661, § 1343(a)(20)(D), struck out “the” before “Congress”.

Subsec. (b). Pub. L. 99-661, § 1343(a)(20)(E), struck out “the authority of subsection (a) of” after “under”.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Section 2805(b) of Pub. L. 102-190 provided that: “Section 2809 of title 10, United States Code, as amended by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991].”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100-456, set out as a note under section 2391 of this title.

#### DEMONSTRATION PROGRAM ON REDUCTION IN LONG-TERM FACILITY MAINTENANCE COSTS

Pub. L. 107-107, div. B, title XXVIII, § 2814, Dec. 28, 2001, 115 Stat. 1310, as amended by Pub. L. 107-314, div. B, title XXVIII, § 2813(a)-(d)(1), Dec. 2, 2002, 116 Stat. 2709, 2710, provided that:

“(a) **AUTHORITY TO CARRY OUT PROGRAM.**—The Secretary of Defense or the Secretary of a military department may conduct a demonstration program to assess the feasibility and desirability of including facility maintenance requirements in construction contracts for military construction projects for the purpose of determining whether such requirements facilitate reductions in the long-term facility maintenance costs of the military departments.

“(b) **CONTRACTS.**—(1) Not more than 12 contracts per military department may contain requirements re-

ferred to in subsection (a) for the purpose of the demonstration program.

“(2) The demonstration program may only cover contracts entered into on or after the date of the enactment of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107-314, approved Dec. 2, 2002], except that the Secretary of the Army shall treat any contract containing requirements referred to in subsection (a) that was entered into under the authority in such subsection between that date and December 28, 2001, as a contract for the purpose of the demonstration program.

“(c) **EFFECTIVE PERIOD OF REQUIREMENTS.**—The effective period of a requirement referred to in subsection (a) that is included in a contract for the purpose of the demonstration program may not exceed five years.

“(d) **REPORTING REQUIREMENTS.**—Not later than January 31, 2005, the Secretary of Defense shall submit to Congress a report on the demonstration program, including the following:

“(1) A description of all contracts that contain requirements referred to in subsection (a) for the purpose of the demonstration program.

“(2) An evaluation of the demonstration program and a description of the experience of the Secretary with respect to such contracts.

“(3) Any recommendations, including recommendations for the termination, continuation, or expansion of the demonstration program, that the Secretary considers appropriate.

“(e) **EXPIRATION.**—The authority under subsection (a) to include requirements referred to in that subsection in contracts under the demonstration program shall expire on September 30, 2006.

“(f) **FUNDING.**—Amounts authorized to be appropriated for the military departments or defense-wide for a fiscal year for military construction shall be available for the demonstration program under this section in such fiscal year.”

[Pub. L. 107-314, div. B, title XXVIII, § 2813(d)(2), Dec. 2, 2002, 116 Stat. 2710, provided that: “The amendment made by paragraph (1) [amending section 2814(f) of Pub. L. 107-107, set out above] shall not affect the availability for the purpose of the demonstration program under section 2814 of the Military Construction Authorization Act for Fiscal Year 2002, as amended by this section, of any amounts authorized to be appropriated before the date of the enactment of this Act [Dec. 2, 2002] for the Army for military construction that have been obligated for the demonstration program, but not expended, as of that date.”]

#### REPORT

Section 2302(c) of Pub. L. 100-180 directed each Secretary who has entered into a contract under this section to submit a report to Committees on Armed Services of Senate and House of Representatives by Feb. 15, 1989, containing date and duration of, other party to, and nature of activities carried out under each such contract, and recommendations, and reasons therefor, concerning whether authority to enter into contracts under this section should be extended.

#### [§ 2810. Repealed. Pub. L. 107-314, div. A, title III, § 313(b), Dec. 2, 2002, 116 Stat. 2507]

Section, added Pub. L. 99-499, title II, § 211(b)(1), Oct. 17, 1986, 100 Stat. 1725, related to military construction projects for environmental response actions.

#### § 2811. Repair of facilities

(a) **REPAIRS USING OPERATIONS AND MAINTENANCE FUNDS.**—Using funds available to the Secretary concerned for operation and maintenance, the Secretary concerned may carry out repair projects for an entire single-purpose facility or one or more functional areas of a multipurpose facility.

(b) **APPROVAL REQUIRED FOR MAJOR REPAIRS.**—A repair project costing more than \$7,500,000 may not be carried out under this section unless approved in advance by the Secretary concerned. In determining the total cost of a repair project, the Secretary shall include all phases of a multi-year repair project to a single facility. In considering a repair project for approval, the Secretary shall ensure that the project is consistent with force structure plans, that repair of the facility is more cost effective than replacement, and that the project is an appropriate use of operation and maintenance funds.

(c) **PROHIBITION ON NEW CONSTRUCTION OR ADDITIONS.**—Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.

(d) **CONGRESSIONAL NOTIFICATION.**—When a decision is made to carry out a repair project under this section with an estimated cost in excess of \$7,500,000, the Secretary concerned shall submit to the appropriate committees of Congress a report containing—

(1) the justification for the repair project and the current estimate of the cost of the project, including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project;

(2) if the current estimate of the cost of the repair project exceeds 75 percent of the estimated cost of a military construction project to replace the facility, an explanation of the reasons why replacement of the facility is not in the best interest of the Government; and

(3) a description of the elements of military construction, including the elements specified in section 2802(b) of this title, incorporated into the repair project.

(e) **REPAIR PROJECT DEFINED.**—In this section, the term “repair project” means a project to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose.

(Added Pub. L. 99-661, div. A, title III, §315(a), Nov. 14, 1986, 100 Stat. 3854, §2810; renumbered §2811, Pub. L. 100-26, §7(e)(3), Apr. 21, 1987, 101 Stat. 281; amended Pub. L. 103-337, div. B, title XXVIII, §2801(a), Oct. 5, 1994, 108 Stat. 3050; Pub. L. 105-85, div. B, title XXVIII, §2802, Nov. 18, 1997, 111 Stat. 1990; Pub. L. 108-375, div. B, title XXVIII, §2801, Oct. 28, 2004, 118 Stat. 2119; Pub. L. 111-84, div. B, title XXVIII, §2802, Oct. 28, 2009, 123 Stat. 2661.)

#### AMENDMENTS

2009—Subsec. (d)(2), (3). Pub. L. 111-84 added pars. (2) and (3) and struck out former par. (2) which read as follows: “the justification for carrying out the project under this section.”

2004—Subsec. (b). Pub. L. 108-375, §2801(a), substituted “\$7,500,000” for “\$5,000,000”.

Subsec. (d). Pub. L. 108-375, §2801(b), substituted “\$7,500,000” for “\$10,000,000” in introductory provisions.

Subsec. (d)(1). Pub. L. 108-375, §2801(c), inserted before semicolon “, including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project”.

1997—Subsecs. (d), (e). Pub. L. 105-85 added subsecs. (d) and (e).

1994—Pub. L. 103-337 substituted “Repair” for “Renovation” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) The Secretary concerned may carry out renovation projects that combine maintenance, repair, and minor construction projects for an entire single-purpose facility, or one or more functional areas of a multipurpose facility, using funds available for operations and maintenance.

“(b) The amount obligated on such a renovation project may not exceed the maximum amount specified by law for a minor construction project under section 2805 of this title.

“(c) Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.”

#### § 2812. Lease-purchase of facilities

(a)(1) The Secretary concerned may enter into an agreement with a private contractor for the lease of a facility of the kind specified in paragraph (2) if the facility is provided at the expense of the contractor on a military installation under the jurisdiction of the Department of Defense.

(2) The facilities that may be leased pursuant to paragraph (1) are as follows:

(A) Administrative office facilities.

(B) Troop housing facilities.

(C) Energy production facilities.

(D) Utilities, including potable and waste water treatment facilities.

(E) Hospital and medical facilities.

(F) Transient quarters.

(G) Depot or storage facilities.

(H) Child care centers.

(I) Classroom and laboratories.

(b) Leases entered into under subsection (a)—

(1) may not exceed a term of 32 years;

(2) shall provide that, at the end of the term of the lease, title to the leased facility shall vest in the United States; and

(3) shall include such other terms and conditions as the Secretary concerned determines are necessary or desirable to protect the interests of the United States.

(c)(1) The Secretary concerned may not enter into a lease under this section until—

(A) the Secretary submits to the appropriate committees of Congress a justification of the need for the facility for which the proposed lease is being entered into and an economic analysis (based upon accepted life-cycle costing procedures) that demonstrates the cost effectiveness of the proposed lease compared with a military construction project for the same facility; and

(B) a period of 21 days has expired following the date on which the justification and economic analysis are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title.

(2) Each Secretary concerned may, under this section, enter into—

(A) not more than three leases in fiscal year 1990; and

(B) not more than five leases in each of the fiscal years 1991 and 1992.

(d) Each lease entered into under this section shall include a provision that the obligation of

the United States to make payments under the lease in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 101-189, div. B, title XXVIII, §2809(a), Nov. 29, 1989, 103 Stat. 1649; amended Pub. L. 101-510, div. B, title XXVIII, §2864, Nov. 5, 1990, 104 Stat. 1806; Pub. L. 108-136, div. A, title X, §1031(a)(39), Nov. 24, 2003, 117 Stat. 1601.)

#### AMENDMENTS

2003—Subsec. (c)(1)(B). Pub. L. 108-136 inserted before period at end “or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title”.

1990—Subsec. (a)(2)(I). Pub. L. 101-510 added subpar. (I).

### § 2813. Acquisition of existing facilities in lieu of authorized construction

(a) ACQUISITION AUTHORITY.—Using funds appropriated for a military construction project authorized by law for a military installation, the Secretary of the military department concerned may acquire an existing facility (including the real property on which the facility is located) at or near the military installation instead of carrying out the authorized military construction project if the Secretary determines that—

(1) the acquisition of the facility satisfies the requirements of the military department concerned for the authorized military construction project; and

(2) it is in the best interests of the United States to acquire the facility instead of carrying out the authorized military construction project.

(b) MODIFICATION OR CONVERSION OF ACQUIRED FACILITY.—(1) As part of the acquisition of an existing facility under subsection (a), the Secretary of the military department concerned may carry out such modifications, repairs, or conversions of the facility as the Secretary considers to be necessary so that the facility satisfies the requirements for which the military construction project was authorized.

(2) The costs of anticipated modifications, repairs, or conversions under paragraph (1) are required to remain within the authorized amount of the military construction project. The Secretary concerned shall consider such costs in determining whether the acquisition of an existing facility is—

(A) more cost effective than carrying out the authorized military construction project; and

(B) in the best interests of the United States.

(c) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the acquisition of a facility under subsection (a) until the Secretary concerned transmits to the appropriate committees of Congress a written notification of the determination to acquire an existing facility instead of carrying out the authorized military construction project. The notification shall include the reasons for acquiring the facility. After the notification is transmitted, the Secretary may then enter into the contract

only after the end of the 21-day period beginning on the date on which the notification is received by the committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 103-160, div. B, title XXVIII, §2805(a)(1), Nov. 30, 1993, 107 Stat. 1886; amended Pub. L. 104-106, div. A, title XV, §1502(a)(25), Feb. 10, 1996, 110 Stat. 506; Pub. L. 108-136, div. A, title X, §1031(a)(40), Nov. 24, 2003, 117 Stat. 1601; Pub. L. 109-163, div. B, title XXVIII, §2801(b), Jan. 6, 2006, 119 Stat. 3504.)

#### AMENDMENTS

2006—Subsec. (c). Pub. L. 109-163 substituted “21-day period” for “30-day period” and “14-day period” for “21-day period”.

2003—Subsec. (c). Pub. L. 108-136 struck out “the end of the 30-day period beginning on the date” after “until” and inserted last sentence.

1996—Subsec. (c). Pub. L. 104-106 substituted “appropriate committees of Congress” for “Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives”.

#### EFFECTIVE DATE

Section 2805(b) of Pub. L. 103-160 provided that: “Section 2813 of title 10, United States Code, as added by subsection (a), shall apply with respect to military construction projects authorized on or after the date of the enactment of this Act [Nov. 30, 1993].”

### § 2814. Special authority for development of Ford Island, Hawaii

(a) IN GENERAL.—(1) Subject to paragraph (2), the Secretary of the Navy may exercise any authority or combination of authorities in this section for the purpose of developing or facilitating the development of Ford Island, Hawaii, to the extent that the Secretary determines the development is compatible with the mission of the Navy.

(2) The Secretary of the Navy may not exercise any authority under this section until—

(A) the Secretary submits to the appropriate committees of Congress a master plan for the development of Ford Island, Hawaii; and

(B) a period of 30 calendar days has elapsed following the date on which the notification is received by those committees.

(b) CONVEYANCE AUTHORITY.—(1) The Secretary of the Navy may convey to any public or private person or entity all right, title, and interest of the United States in and to any real property (including any improvements thereon) or personal property under the jurisdiction of the Secretary in the State of Hawaii that the Secretary determines—

(A) is excess to the needs of the Navy and all of the other armed forces; and

(B) will promote the purpose of this section.

(2) A conveyance under this subsection may include such terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

(c) LEASE AUTHORITY.—(1) The Secretary of the Navy may lease to any public or private person or entity any real property or personal property under the jurisdiction of the Secretary in the State of Hawaii that the Secretary determines—

(A) is not needed for current operations of the Navy and all of the other armed forces; and

(B) will promote the purpose of this section.

(2) A lease under this subsection shall be subject to section 2667(b)(1) of this title and may include such other terms as the Secretary considers appropriate to protect the interests of the United States.

(3) A lease of real property under this subsection may provide that, upon termination of the lease term, the lessee shall have the right of first refusal to acquire the real property covered by the lease if the property is then conveyed under subsection (b).

(4)(A) The Secretary may provide property support services to or for real property leased under this subsection.

(B) To the extent provided in appropriations Acts, any payment made to the Secretary for services provided under this paragraph shall be credited to the appropriation, account, or fund from which the cost of providing the services was paid.

(d) ACQUISITION OF LEASEHOLD INTEREST BY SECRETARY.—(1) The Secretary of the Navy may acquire a leasehold interest in any facility constructed under subsection (f) as consideration for a transaction authorized by this section upon such terms as the Secretary considers appropriate to promote the purpose of this section.

(2) The term of a lease under paragraph (1) may not exceed 10 years, unless the Secretary of Defense approves a term in excess of 10 years for purposes of this section.

(3) A lease under this subsection may provide that, upon termination of the lease term, the United States shall have the right of first refusal to acquire the facility covered by the lease.

(e) REQUIREMENT FOR COMPETITION.—The Secretary of the Navy shall use competitive procedures for purposes of selecting the recipient of real or personal property under subsection (b) and the lessee of real or personal property under subsection (c).

(f) CONSIDERATION.—(1) As consideration for the conveyance of real or personal property under subsection (b), or for the lease of real or personal property under subsection (c), the Secretary of the Navy shall accept cash, real property, personal property, or services, or any combination thereof, in an aggregate amount equal to not less than the fair market value of the real or personal property conveyed or leased.

(2) Subject to subsection (i), the services accepted by the Secretary under paragraph (1) may include the following:

(A) The construction or improvement of facilities at Ford Island.

(B) The restoration or rehabilitation of real property at Ford Island.

(C) The provision of property support services for property or facilities at Ford Island.

(g) NOTICE AND WAIT REQUIREMENTS.—The Secretary of the Navy may not carry out a transaction authorized by this section until—

(1) the Secretary submits to the appropriate committees of Congress a notification of the transaction, including—

(A) a detailed description of the transaction; and

(B) a justification for the transaction specifying the manner in which the transaction will meet the purposes of this section; and

(2) a period of 30 calendar days has elapsed following the date on which the notification is received by those committees or, if earlier, a period of 20 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(h) FORD ISLAND IMPROVEMENT ACCOUNT.—(1) There is established on the books of the Treasury an account to be known as the “Ford Island Improvement Account”.

(2) There shall be deposited into the account the following amounts:

(A) Amounts authorized and appropriated to the account.

(B) Except as provided in subsection (c)(4)(B), the amount of any cash payment received by the Secretary for a transaction under this section.

(i) USE OF ACCOUNT.—(1) Subject to paragraph (2), to the extent provided in advance in appropriations Acts, funds in the Ford Island Improvement Account may be used as follows:

(A) To carry out or facilitate the carrying out of a transaction authorized by this section.

(B) To carry out improvements of property or facilities at Ford Island.

(C) To obtain property support services for property or facilities at Ford Island.

(2) To extent that the authorities provided under subchapter IV of this chapter are available to the Secretary of the Navy, the Secretary may not use the authorities in this section to acquire, construct, or improve family housing units, military unaccompanied housing units, or ancillary supporting facilities related to military housing.

(3)(A) The Secretary may transfer funds from the Ford Island Improvement Account to the following funds:

(i) The Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of this title.

(ii) The Department of Defense Military Unaccompanied Housing Improvement Fund established by section 2883(a)(2) of this title.

(B) Amounts transferred under subparagraph (A) to a fund referred to in that subparagraph shall be available in accordance with the provisions of section 2883 of this title for activities authorized under subchapter IV of this chapter at Ford Island.

(j) INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS.—Except as otherwise provided in this section, transactions under this section shall not be subject to the following:

(1) Sections 2667 and 2696 of this title.

(2) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(3) Subchapter II of chapter 5 and sections 541–555 of title 40.

(k) SCORING.—Nothing in this section shall be construed to waive the applicability to any lease

entered into under this section of the budget scorekeeping guidelines used to measure compliance with the Balanced Budget and Emergency Deficit Control Act of 1985.

(I) **PROPERTY SUPPORT SERVICE DEFINED.**—In this section, the term ‘property support service’ means the following:

(1) Any utility service or other service listed in section 2686(a) of this title.

(2) Any other service determined by the Secretary to be a service that supports the operation and maintenance of real property, personal property, or facilities.

(Added Pub. L. 106–65, div. B, title XXVIII, §2802(a)(1), Oct. 5, 1999, 113 Stat. 845; amended Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(16)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291; Pub. L. 107–107, div. A, title X, §1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, §3(b)(18), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 111–383, div. B, title XXVIII, §2803(c), Jan. 7, 2011, 124 Stat. 4459.)

#### REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (k), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

#### AMENDMENTS

2011—Subsec. (g)(2). Pub. L. 111–383 inserted before period at end “or, if earlier, a period of 20 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

2002—Subsec. (j)(3). Pub. L. 107–217 substituted “Subchapter II of chapter 5 and sections 541–555 of title 40” for “Sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484)”.

2001—Subsec. (j)(2). Pub. L. 107–107 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

2000—Subsec. (k). Pub. L. 106–398 inserted “and” after “Balanced Budget”.

### § 2815. Joint use military construction projects: annual evaluation

(a) **JOINT USE MILITARY CONSTRUCTION PROJECT DEFINED.**—In this section, the term “joint use military construction project” means a military construction project for a facility intended to be used by—

(1) both the active and a reserve component of a single armed force; or

(2) two or more components (whether active or reserve components) of the armed forces.

(b) **ANNUAL EVALUATION.**—In the case of the budget submitted under section 1105 of title 31 for any fiscal year, the Secretary of Defense shall include in the budget justification materials submitted to Congress in support of the budget a certification by each Secretary concerned that, in evaluating military construction projects for inclusion in the budget for that fis-

cal year, the Secretary concerned evaluated the feasibility of carrying out the projects as joint use military construction projects.

(Added Pub. L. 106–398, §1 [div. B, title XXVIII, §2801(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–412; amended Pub. L. 107–314, div. A, title X, §1062(a)(14), Dec. 2, 2002, 116 Stat. 2650.)

#### AMENDMENTS

2002—Subsec. (b). Pub. L. 107–314 substituted “for any fiscal year” for “for fiscal year 2003 and each fiscal year thereafter”.

### SUBCHAPTER II—MILITARY FAMILY HOUSING

Sec.	
2821.	Requirement for authorization of appropriations for construction and acquisition of military family housing.
2822.	Requirement for authorization of number of family housing units.
[2823.	Repealed.]
2824.	Authorization for acquisition of existing family housing in lieu of construction.
2825.	Improvements to family housing units.
2826.	Military family housing: local comparability of room patterns and floor areas.
2827.	Relocation of military family housing units.
2828.	Leasing of military family housing.
2829.	Multi-year contracts for supplies and services.
2830.	Occupancy of substandard family housing units.
2831.	Military family housing management account.
2832.	Homeowners assistance program.
2833.	Family housing support.
2834.	Participation in Department of State housing pools.
2835.	Long-term leasing of military family housing to be constructed.
2835a.	Use of military family housing constructed under build and lease authority to house other members.
2836.	Military housing rental guarantee program.
2837.	Limited partnerships with private developers of housing.
2838.	Leasing of military family housing to Secretary of Defense.

#### AMENDMENTS

2008—Pub. L. 110–417, div. B, title XXVIII, §§2803(b), 2804(b), Oct. 14, 2008, 122 Stat. 4720, 4721, added items 2835a and 2838.

2006—Pub. L. 109–364, div. B, title XXVIII, §2803(b), Oct. 17, 2006, 120 Stat. 2467, struck out item 2823 “Determination of availability of suitable alternative housing for acquisition in lieu of construction of new family housing”.

2000—Pub. L. 106–398, §1 [div. B, title XXVIII, §2803(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–413, substituted “Military family housing: local comparability of room patterns and floor areas” for “Limitations on space by pay grade” in item 2826.

1994—Pub. L. 103–337, div. B, title XXVIII, §2803(b), Oct. 5, 1994, 108 Stat. 3053, added item 2837.

1991—Pub. L. 102–190, div. B, title XXVIII, §§2806(a)(2), 2809(a)(2), Dec. 5, 1991, 105 Stat. 1540, 1543, added items 2835 and 2836.

1985—Pub. L. 99–167, title VIII, §§804(b)(2), 808(b), Dec. 3, 1985, 99 Stat. 987, 989, added items 2833 and 2834.

### § 2821. Requirement for authorization of appropriations for construction and acquisition of military family housing

(a) Except as provided in subsection (b), funds may not be appropriated for the construction,

acquisition, leasing, addition, extension, expansion, alteration, relocation, or operation and maintenance of family housing under the jurisdiction of the Department of Defense unless the appropriation of such funds has been authorized by law.

(b) In addition to the funds authorized to be appropriated by law in any fiscal year for the purposes described in subsection (a), there are authorized to be appropriated such additional sums as may be necessary for increases in salary, pay, retirement, and other employee benefits authorized by law for civilian employees of the Department of Defense whose compensation is provided for by funds appropriated for the purposes described in such subsection.

(c) Amounts authorized by law for construction of military family housing units include amounts for (1) site preparation (including demolition), (2) installation of utilities, (3) ancillary supporting facilities, (4) shades, screens, ranges, refrigerators, and all other equipment and fixtures installed in such units, and (5) construction supervision, inspection, and overhead.

(d) Amounts authorized by law for construction and acquisition of military family housing and facilities include amounts for—

- (1) minor construction;
- (2) improvements to existing military family housing units and facilities;
- (3) relocation of military family housing units under section 2827 of this title; and
- (4) architectural and engineering services and construction design.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 157; amended Pub. L. 99-145, title XIII, §1303(a)(18), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99-167, title VIII, §804(a), Dec. 3, 1985, 99 Stat. 987.)

#### AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted “such subsection” for “such paragraph”.

Subsec. (d). Pub. L. 99-167 added subsec. (d).

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

#### REPAIR AND MAINTENANCE OF FAMILY HOUSING UNITS

Pub. L. 111-117, div. E, title I, §123, Dec. 16, 2009, 123 Stat. 3295, provided that: “Notwithstanding any other provision of law, funds made available in this title [see Tables for classification] for operation and maintenance of family housing shall be the exclusive source of funds for repair and maintenance of all family housing units, including general or flag officer quarters: *Provided*, That not more than \$35,000 per unit may be spent annually for the maintenance and repair of any general or flag officer quarters without 30 days prior notification, or 14 days for a notification provided in an electronic medium pursuant to sections 480 and 2883 of title 10, United States Code, to the Committees on Appropriations of both Houses of Congress, except that an after-the-fact notification shall be submitted if the limitation is exceeded solely due to costs associated with environmental remediation that could not be reasonably anticipated at the time of the budget submission: *Provided further*, That the Under Secretary of Defense (Comptroller) is to report annually to the Committees on Appropriations of both Houses of Congress all operation and maintenance expenditures for each individual general or flag officer quarters for the prior fiscal year.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 110-329, div. E, title I, §123, Sept. 30, 2008, 122 Stat. 3700.

Pub. L. 110-161, div. I, title I, §123, Dec. 26, 2007, 121 Stat. 2261.

Pub. L. 109-114, title I, §124, Nov. 30, 2005, 119 Stat. 2380, as amended by Pub. L. 109-148, div. B, title V, §5013, Dec. 30, 2005, 119 Stat. 2815.

Pub. L. 108-324, div. A, §124, Oct. 13, 2004, 118 Stat. 1228.

Pub. L. 108-132, §125, Nov. 22, 2003, 117 Stat. 1382.

Pub. L. 107-249, §127, Oct. 23, 2002, 116 Stat. 1586.

Pub. L. 107-64, §127, Nov. 5, 2001, 115 Stat. 482.

Pub. L. 106-246, div. A, §127, July 13, 2000, 114 Stat. 518.

Pub. L. 106-52, §128, Aug. 17, 1999, 113 Stat. 267.

#### PILOT PROGRAM FOR MILITARY FAMILY HOUSING

Pub. L. 100-180, div. B, subdiv. 3, title II, §2321, Dec. 4, 1987, 101 Stat. 1218, required Secretary of Defense, using \$1,000,000 of funds appropriated pursuant to authorization in subsection (a)(10)(B) of section 2145 of Pub. L. 100-180, to establish and carry out, during fiscal years 1988, 1989, and 1990, a pilot program for purpose of assisting units of general local government to increase amount of affordable family housing available to military personnel; required Secretary, establishing and carrying out such programs, to select at least five units of general local government severely impacted by presence of military bases and personnel; set forth criteria for selection of units of general local government, authority to make grants, cooperative agreements, etc., and uses of available funds; and required Secretary to report to Committees on Armed Services of Senate and House no later than Mar. 15 of 1988, 1989, 1990, and 1991 with respect to activities carried out under this section.

#### MILITARY HOUSING RENTAL GUARANTEE PROGRAM

Pub. L. 98-115, title VIII, §802, Oct. 11, 1983, 97 Stat. 783, as amended by Pub. L. 98-407, title VIII, §806(b), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99-167, title VIII, §801(a), Dec. 3, 1985, 99 Stat. 985; Pub. L. 99-661, div. B, title VII, §2713(a), Nov. 14, 1986, 100 Stat. 4042; Pub. L. 100-180, div. B, subdiv. 3, title I, §2307, Dec. 4, 1987, 101 Stat. 1216; Pub. L. 101-189, div. B, title XXVIII, §2801, Nov. 29, 1989, 103 Stat. 1646; Pub. L. 101-510, div. B, title XXVIII, §2811, Nov. 5, 1990, 104 Stat. 1788, provided for agreements and contracts relating to military housing rental guarantee program, prior to repeal by Pub. L. 102-190, div. B, title XXVIII, §2809(b), (c), Dec. 5, 1991, 105 Stat. 1543, such repeal not to affect the validity of any contract entered into before Dec. 5, 1991, under section 802 of Pub. L. 98-115 as in effect on Dec. 4, 1991. See section 2836 of this title.

#### FAMILY HOUSING CONSTRUCTED OVERSEAS

Pub. L. 98-115, title VIII, §803, Oct. 11, 1983, 97 Stat. 784, as amended by Pub. L. 98-407, title VIII, §812, Aug. 28, 1984, 98 Stat. 1524; Pub. L. 101-510, div. A, title XIII, §1302(f), Nov. 5, 1990, 104 Stat. 1669, provided that any contract entered into for the construction of military family housing for the Department of Defense in a foreign country was to require the use of housing fabricated in the United States by a United States contractor or, in the case of concrete housing, the use of housing produced in a plant that was fabricated in the United States by a United States company, and for which the materials, fixtures, and equipment used in the construction (other than cement, sand, and aggregates) were manufactured in the United States, prior to repeal by Pub. L. 107-314, div. B, title XXVIII, §2804, Dec. 2, 2002, 116 Stat. 2705.

### § 2822. Requirement for authorization of number of family housing units

- (a) Except as otherwise provided in subsection (b) or as otherwise authorized by law, the Sec-



retary concerned may not construct or acquire military family housing units unless the number of units to be constructed or acquired has been specifically authorized by law.

(b) Subsection (a) does not apply to the following:

(1) Housing units acquired under section 404 of the Housing Amendments of 1955 (42 U.S.C. 1594a).

(2) Housing units leased under section 2828 of this title.

(3) Housing units acquired under the Homeowners Assistance Program referred to in section 2832 of this title.

(4) Housing units acquired without consideration.

(5) Replacement housing units constructed under section 2825(c) of this title.

(6) Housing units constructed or provided under section 2869 of this title.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 158; amended Pub. L. 98-525, title XIV, §1405(44), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 100-180, div. B, subdiv. 3, title I, §2308, Dec. 4, 1987, 101 Stat. 1216; Pub. L. 101-510, div. A, title XIII, §1301(17), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102-25, title VII, §701(j)(9), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102-484, div. B, title XXVIII, §2802(b), Oct. 23, 1992, 106 Stat. 2606; Pub. L. 108-136, div. B, title XXVIII, §2805(b), Nov. 24, 2003, 117 Stat. 1721.)

#### AMENDMENTS

2003—Subsec. (b)(6). Pub. L. 108-136 added par. (6).

1992—Subsec. (b)(5). Pub. L. 102-484 added par. (5).

1991—Subsec. (b)(4). Pub. L. 102-25 realigned margin of par. (4).

1990—Subsec. (b)(4). Pub. L. 101-510 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Housing units acquired without consideration, if—

“(A) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed acquisition; and

“(B) a period of 21 days elapses after the notification is received by those committees.”

1987—Subsec. (b)(4). Pub. L. 100-180 added par. (4).

1984—Subsec. (b)(3). Pub. L. 98-525 substituted “section 2832” for “section 2833”.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### **[§ 2823. Repealed. Pub. L. 109-364, div. B, title XXVIII, §2803(a), Oct. 17, 2006, 120 Stat. 2467]**

Section, added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 158; amended Pub. L. 105-85, div. A, title X, §1041(b), Nov. 18, 1997, 111 Stat. 1885, related to determination of availability of suitable alternative housing for acquisition in lieu of construction of new family housing.

### **§ 2824. Authorization for acquisition of existing family housing in lieu of construction**

(a) In lieu of constructing any family housing units authorized by law to be constructed, the Secretary concerned may acquire sole interest in existing family housing units that are privately owned or that are held by the Department of Housing and Urban Development, except that in foreign countries the Secretary con-

cerned may acquire less than sole interest in existing family housing units.

(b) When authority provided by law to construct military family housing units is used to acquire existing family housing units under subsection (a), the authority includes authority to acquire interests in land.

(c) The net floor area of a family housing unit acquired under the authority of this section may not exceed the applicable limitation specified in section 2826 of this title. The Secretary concerned may waive the limitation set forth in the preceding sentence to family housing units acquired under this section during the five-year period beginning on February 10, 1996.

(d) Family housing units may not be acquired under this section through the exercise of eminent domain authority.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 104-106, div. B, title XXVIII, §2813, Feb. 10, 1996, 110 Stat. 553; Pub. L. 104-201, div. A, title X, §1074(a)(17), Sept. 23, 1996, 110 Stat. 2659.)

#### AMENDMENTS

1996—Subsec. (c). Pub. L. 104-201 substituted “February 10, 1996” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996”.

Pub. L. 104-106 inserted at end “The Secretary concerned may waive the limitation set forth in the preceding sentence to family housing units acquired under this section during the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996.”

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### **§ 2825. Improvements to family housing units**

(a)(1) Authority provided by law to improve existing military family housing units and ancillary family housing support facilities is authority to make alterations, additions, expansions, and extensions.

(2) In this section, the term “improvement” includes rehabilitation of a housing unit and major maintenance or repair work to be accomplished concurrently with an improvement project. Such term does not include day-to-day maintenance and repair work.

(b)(1) Funds may not be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units that are to be converted into or are to be used as a single family housing unit, if the cost per unit of such improvement will exceed (A) \$50,000 multiplied by the area construction cost index as developed by the Department of Defense for the location concerned at the time of contract award, or (B) in the case of improvements necessary to make the unit suitable for habitation by a handicapped person, \$60,000 multiplied by such index. The Secretary concerned may waive the limitations contained in the preceding sentence if such Secretary determines that, considering the useful life of the structure to be improved and the useful life of a newly constructed unit and the cost of construction and of operation and maintenance of each kind

of unit over its useful life, the improvement will be cost-effective. If the Secretary concerned makes a determination under the preceding sentence with respect to an improvement, the waiver under that sentence with respect to that improvement may take effect only after the Secretary transmits a notice of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective, to the appropriate committees of Congress and a period of 21 days has elapsed after the date on which the notification is received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.

(2) In determining the applicability of the limitation contained in paragraph (1), the Secretary concerned shall include as part of the cost of the improvement of the unit or units concerned the following:

(A) The cost of major maintenance or repair work undertaken in connection with the improvement.

(B) Any cost, other than the cost of activities undertaken beyond a distance of five feet from the unit or units concerned, in connection with—

(i) the furnishing of electricity, gas, water, and sewage disposal;

(ii) the construction or repair of roads, drives, and walks; and

(iii) grading and drainage work.

(3) In determining the applicability of the limitation contained in paragraph (1), the Secretary concerned shall not include as part of the cost of the improvement of the unit or units concerned the following:

(A) The cost of the installation of communications, security, or antiterrorism equipment required by an occupant of the unit or units to perform duties assigned to the occupant as a member of the armed forces.

(B) The cost of the maintenance or repair of equipment described in subparagraph (A) installed for the purpose specified in such subparagraph.

(4) The limitation contained in the first sentence of paragraph (1) does not apply to a project for the improvement of a family housing unit or units referred to in that sentence if the project (including the amount requested for the project) is identified in the budget materials submitted to Congress by the Secretary of Defense in connection with the submission to Congress of the budget for a fiscal year pursuant to section 1105 of title 31.

(c)(1) The Secretary concerned may construct replacement military family housing units in lieu of improving existing military family housing units if—

(A) the improvement of the existing housing units has been authorized by law;

(B) the Secretary determines that the improvement project is no longer cost-effective after a review of post-design or bid cost estimates;

(C) the Secretary submits to the committees referred to in subsection (b)(1) a notice containing—

(i) an economic analysis demonstrating that the improvement project would exceed 70 percent of the cost of constructing replacement housing units intended for members of the armed forces in the same pay grade or grades as those members who occupy the existing housing units; and

(ii) if the replacement housing units are intended for members of the armed forces in a different pay grade or grades, a justification of the need for the replacement housing units based upon the long-term requirements of the armed forces in the location concerned; and

(D) a period of 21 days elapses after the date on which the Secretary submits the notice required by subparagraph (C) or, if over sooner, a period of 14 days elapses after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.

(2) The amount that may be expended to construct replacement military family housing units under this subsection may not exceed the amount that is otherwise available to carry out the previously authorized improvement project.

(d) This section does not apply to projects authorized for restoration or replacement of housing units that have been damaged or destroyed.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 99-661, div. B, title VII, §2702(c), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100-26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100-180, div. B, subdiv. 3, title I, §2305, Dec. 4, 1987, 101 Stat. 1215; Pub. L. 101-189, div. B, title XXVIII, §2804, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 101-510, div. B, title XXVIII, §2812, Nov. 5, 1990, 104 Stat. 1788; Pub. L. 102-484, div. B, title XXVIII, §2802(a), Oct. 23, 1992, 106 Stat. 2605; Pub. L. 103-337, div. B, title XXVIII, §2802, Oct. 5, 1994, 108 Stat. 3050; Pub. L. 104-106, div. A, title XV, §1502(a)(26), Feb. 10, 1996, 110 Stat. 506; Pub. L. 104-201, div. B, title XXVIII, §2803, Sept. 23, 1996, 110 Stat. 2788; Pub. L. 106-398, §1 [div. B, title XXVIII, §2802], Oct. 30, 2000, 114 Stat. 1654, 1654A-413; Pub. L. 108-136, div. A, title X, §1031(a)(41), Nov. 24, 2003, 117 Stat. 1601.)

#### AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108-136, §1031(a)(41)(A), struck out “(i)” before “such Secretary determines” and substituted period and last sentence for “, and (ii) a period of 21 days elapses after the date on which the appropriate committees of Congress receive a notice from such Secretary of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective.”.

Subsec. (c)(1)(D). Pub. L. 108-136, §1031(a)(41)(B), inserted before period at end “or, if over sooner, a period of 14 days elapses after the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title”.

2000—Subsec. (b)(3), (4). Pub. L. 106-398 added par. (3) and redesignated former par. (3) as (4).

1996—Subsec. (a)(2). Pub. L. 104-201, §2803(a), inserted “major” before “maintenance or repair” and “Such term does not include day-to-day maintenance and repair work.” at end.

Subsec. (b)(1). Pub. L. 104-106 substituted “appropriate committees of Congress” for “Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives”.

Subsec. (b)(2). Pub. L. 104-201, §2803(b), added par. (2) and struck out former par. (2) which read as follows: “In determining the applicability of the limitation contained in paragraph (1), there shall be included as part of the cost of the improvement the cost of repairs undertaken in connection with the improvement and any cost in connection with (A) the furnishing of electricity, gas, water and sewage disposal, (B) the construction or repair of roads and walks, and (C) grading and drainage work.”

1994—Subsec. (b)(3). Pub. L. 103-337 added par. (3).

1992—Subsecs. (c), (d). Pub. L. 102-484 added subsec. (c) and redesignated former subsec. (c) as (d).

1990—Subsec. (b)(1). Pub. L. 101-510 substituted “\$50,000” for “\$40,000” in cl. (A) and inserted at end sentence authorizing Secretary concerned to waive limitations contained in preceding sentence.

1989—Subsec. (b)(1). Pub. L. 101-189 inserted “(A)” after “will exceed” and added cl. (B).

1987—Subsec. (a)(2). Pub. L. 100-26 inserted “the term” after “In this section.”

Subsec. (b)(1). Pub. L. 100-180 substituted “\$40,000” for “\$30,000”.

1986—Subsec. (b)(1). Pub. L. 99-661 substituted “\$30,000” for “an amount specified by law for such purpose”.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

#### PROVISION OF ADEQUATE STORAGE SPACE TO SECURE PERSONAL PROPERTY OUTSIDE OF ASSIGNED MILITARY FAMILY HOUSING UNIT

Pub. L. 109-364, div. A, title III, §362, Oct. 17, 2006, 120 Stat. 2167, provided that: “The Secretary of a military department shall ensure that a member of the Armed Forces under the jurisdiction of the Secretary who occupies a unit of military family housing is provided with adequate storage space to secure personal property that the member is unable to secure within the unit whenever—

“(1) the member is assigned to duty in an area for which special pay under section 310 of title 37, United States Code, is available and the assignment is pursuant to orders specifying an assignment of 180 days or more; and

“(2) the dependents of the member who otherwise occupy the unit of military family housing are absent from the unit for more than 30 consecutive days during the period of the assignment of the member.”

#### INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Maximum amount of \$30,000 per unit for an improvement project for family housing units under this section during the period beginning Oct. 1, 1982, and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(3) of Pub. L. 97-214, set out as a note under section 2828 of this title.

### § 2826. Military family housing: local comparability of room patterns and floor areas

(a) **LOCAL COMPARABILITY.**—In the construction, acquisition, and improvement of military family housing, the Secretary concerned shall ensure that the room patterns and floor areas of military family housing in a particular locality (as designated by the Secretary concerned for purposes of this section) are similar to room patterns and floor areas of similar housing in the private sector in that locality.

(b) **REQUESTS FOR AUTHORITY FOR MILITARY FAMILY HOUSING.**—(1) In submitting to Congress a request for authority to carry out the con-

struction, acquisition, or improvement of military family housing, the Secretary concerned shall include in the request information on the net floor area of each unit of military family housing to be constructed, acquired, or improved under the authority.

(2) In this subsection, the term “net floor area”, in the case of a military family housing unit, means the total number of square feet of the floor space inside the exterior walls of the unit, excluding the floor area of an unfinished basement, an unfinished attic, a utility space, a garage, a carport, an open or insect-screened porch, a stairwell, and any space used for a solar-energy system.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 100-26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 102-190, div. B, title XXVIII, §2808, Dec. 5, 1991, 105 Stat. 1540; Pub. L. 104-106, div. B, title XXVIII, §§2814, 2815, Feb. 10, 1996, 110 Stat. 553; Pub. L. 104-201, div. A, title X, §1074(a)(17), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 106-398, §1 [div. B, title XXVIII, §2803(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-413.)

#### AMENDMENTS

2000—Pub. L. 106-398 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (i) which limited the net floor area allowed in the construction, acquisition, and improvement of military family housing units.

1996—Subsec. (e). Pub. L. 104-106, §2814, struck out at end “The authority provided by this subsection shall expire on September 30, 1994.”

Subsec. (i). Pub. L. 104-106, §2815, added subsec. (i).

Subsec. (i)(1). Pub. L. 104-201 substituted “February 10, 1996” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996”.

1991—Subsecs. (d) to (h). Pub. L. 102-190 added subsecs. (d) and (e) and redesignated former subsecs. (d) to (f) as (f) to (h), respectively.

1987—Subsec. (f). Pub. L. 100-26 inserted “the term” after “In this section.”

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [div. B, title XXVIII, §2803(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-413, provided that:

“(1) The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2001, but the Secretary of Defense shall anticipate the requirements of section 2826 of title 10, United States Code, as added by such subsection, when preparing the budget request for new construction, acquisition, or improvement of military family housing for fiscal year 2002.

“(2) Section 2826 of title 10, United States Code, as in effect on September 30, 2001, shall continue to apply with respect to the construction, acquisition, or improvement of military family housing commenced on or before that date.”

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### § 2827. Relocation of military family housing units

(a) Subject to subsection (b), the Secretary concerned may relocate existing military family housing units from any location where the number of such units exceeds requirements for military family housing to any military installation where there is a housing shortage.

(b) A contract to carry out a relocation of military family housing units under subsection

(a) may not be awarded until (1) the Secretary concerned has notified the appropriate committees of Congress of the proposed new locations of the housing units to be relocated and the estimated cost of and source of funds for the relocation, and (2) a period of 21 days has elapsed after the notification has been received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 160; amended Pub. L. 108-136, div. A, title X, §1031(a)(42), Nov. 24, 2003, 117 Stat. 1602.)

#### AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108-136 inserted before period at end “or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### § 2828. Leasing of military family housing

(a)(1) Subject to paragraph (2), the Secretary of the military department concerned may lease housing facilities at or near a military installation in the United States, Puerto Rico, or Guam for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with fair market rental charge, as family housing to civilian employees of the Department of Defense stationed at such installation.

(2) A lease may only be made under paragraph (1) if the Secretary concerned finds that there is a shortage of adequate housing at or near such military installation and that—

(A) the requirement for such housing is temporary;

(B) leasing would be more cost effective than construction or acquisition of new housing;

(C) family housing is required for personnel attending service school academic courses on permanent change of station orders;

(D) construction of family housing at such installation has been authorized by law but is not yet completed; or

(E) a military construction authorization bill pending in Congress includes a request for authorization of construction of family housing at such installation.

(b)(1) Not more than 10,000 family housing units may be leased at any one time under subsection (a).

(2) Except as provided in paragraphs (3), (4), and (7), expenditures for the rental of housing units under subsection (a) (including the cost of utilities, maintenance, and operation) may not exceed \$12,000 per unit per year, as adjusted from time to time under paragraph (5).

(3) Not more than 500 housing units may be leased under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds the maximum amount per unit per year in effect under paragraph (2) but does

not exceed \$14,000 per unit per year, as adjusted from time to time under paragraph (5).

(4)(A) The Secretary of the Army may lease not more than eight housing units in the vicinity of Miami, Florida, for key and essential personnel, as designated by the Secretary, for the United States Southern Command for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation, including security enhancements) exceeds the expenditure limitations in paragraphs (2) and (3).

(B) The amount of all leases under this paragraph may not exceed \$280,000 per year, as adjusted from time to time under paragraph (6).

(C) The term of any lease under this paragraph may not exceed 5 years.

(D) Until September 30, 2008, the Secretary of the Army may authorize family members of a member of the armed forces on active duty who is assigned to a family-member-restricted area and who, before such assignment, was occupying a housing unit leased under this paragraph, to remain in the leased housing unit until the member completes the assignment. Costs incurred for the leased housing unit during the assignment shall be included in the costs subject to the limitation under subparagraph (B).

(5) At the beginning of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for leases under paragraphs (2), (3), and (7) for the previous fiscal year by the percentage (if any) by which the national average monthly cost of housing (as calculated for purposes of determining rates of basic allowance for housing under section 403 of title 37) for the preceding fiscal year exceeds the national average monthly cost of housing (as so calculated) for the fiscal year before such preceding fiscal year.

(6) At the beginning of each fiscal year, the Secretary of the Army shall adjust the maximum aggregate amount for leases under paragraph (4) for the previous fiscal year by the percentage (if any) by which the annual average cost of housing for the Miami Military Housing Area (as calculated for purposes of determining rates of basic allowance for housing under section 403 of title 37) for the preceding fiscal year exceeds the annual average cost of housing for the Miami Military Housing Area (as so calculated) for the fiscal year before such preceding fiscal year.

(7)(A) Not more than 600 housing units may be leased by the Secretary of the Army under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds the maximum amount per unit per year in effect under paragraph (2) but does not exceed \$35,000 per unit per year, as adjusted from time to time under paragraph (5).

(B) The maximum lease amount provided in subparagraph (A) shall apply only to Army family housing in areas designated by the Secretary of the Army.

(C) The term of a lease under subparagraph (A) may not exceed 2 years.

(c) The Secretary concerned may lease housing facilities in foreign countries for assignment, without rental charge, as family housing

to members of the armed forces and for assignment, with or without rental charge, as family housing to civilian employees of the Department of Defense—

(1) under circumstances specified in clause (A), (B), (D), or (E) of subsection (a)(2);

(2) for incumbents of special command positions (as determined by the Secretary of Defense);

(3) in countries where excessive costs of housing or other lease terms would cause undue hardship on Department of Defense personnel; and

(4) in countries that prohibit leases by individual military or civilian personnel of the United States.

(d)(1) Leases of housing units in foreign countries under subsection (c) for assignment as family housing may be for any period not in excess of 10 years, or 15 years in the case of leases in Korea, and the costs of such leases for any year may be paid out of annual appropriations for that year.

(2) The Secretary may enter into an agreement under this paragraph in connection with a lease entered into under subsection (c). Such an agreement—

(A) shall be for the purpose of compensating a developer for any costs resulting from the termination of the lease during the construction of the housing units that are to be occupied pursuant to the lease;

(B) may be for a period not in excess of three years; and

(C) shall include a provision that the obligation of the United States to make payments under the agreement in any fiscal year is subject to the availability of appropriations.

(e)(1) Expenditures for the rental of family housing in foreign countries (including the costs of utilities, maintenance, and operation) may not exceed \$20,000 per unit per year, except that 450 units may be leased in foreign countries for not more than \$25,000 per unit per year. These maximum lease amounts may be waived by the Secretary concerned with respect to not more than a total of 350 such units that are leased for incumbents of special positions or for personnel assigned to Defense Attache Offices or that are leased in countries where excessive costs of housing would cause undue hardship on Department of Defense personnel.

(2) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is \$25,000 per unit per year, the Secretaries of the military departments may lease not more than 3,300 units of family housing in Italy, subject to that maximum lease amount.

(3) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is \$25,000 per unit per year, the Secretary of the Army may lease not more than 1,175 units of family housing in Korea subject to that maximum lease amount.

(4) In addition to the units of family housing referred to in paragraph (1) for which the maximum lease amount is \$25,000 per unit per year, the Secretary of the Army may lease not more than 2,800 units of family housing in Korea sub-

ject to a maximum lease amount of \$35,000 per unit per year.

(5) The Secretary concerned shall adjust the maximum lease amounts provided for under paragraphs (1), (2), (3), and (4) for the previous fiscal year—

(A) for foreign currency fluctuations from October 1, 1987; and

(B) at the beginning of each fiscal year, by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.

(6) The maximum number of family housing units that may be leased in foreign countries under this section at any one time is 55,775.

(f) A lease for family housing facilities, or for real property related to family housing facilities, in a foreign country for which the average estimated annual rental during the term of the lease exceeds \$1,000,000 may not be made under this section until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed lease, and (2) a period of 21 days elapses after the notification is received by those committees or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(g) Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of interests in land under this section.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 161; amended Pub. L. 97-321, title VIII, §805(b)(2), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 98-115, title VIII, §801, Oct. 11, 1983, 97 Stat. 782; Pub. L. 98-407, title VIII, §806(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99-167, title VIII, §§801(b), 803, 805, Dec. 3, 1985, 99 Stat. 985, 987, 988; Pub. L. 99-661, div. B, title VII, §§2702(d)-(g), 2713(b), 2714, Nov. 14, 1986, 100 Stat. 4040-4042; Pub. L. 100-26, §7(j)(8), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100-180, div. B, subdiv. 3, title I, §§2306(a), 2309, 2311, Dec. 4, 1987, 101 Stat. 1216, 1217; Pub. L. 100-370, §1(l)(2), July 19, 1988, 102 Stat. 849; Pub. L. 100-456, div. B, title XXVIII, §2802, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101-189, div. B, title XXVIII, §§2802, 2805, Nov. 29, 1989, 103 Stat. 1646, 1647; Pub. L. 102-190, div. B, title XXVIII, §2806(b), Dec. 5, 1991, 105 Stat. 1540; Pub. L. 103-35, title II, §201(d)(7), May 31, 1993, 107 Stat. 99; Pub. L. 103-160, div. B, title XXVIII, §2801, Nov. 30, 1993, 107 Stat. 1883; Pub. L. 104-106, div. B, title XXVIII, §2816, Feb. 10, 1996, 110 Stat. 553; Pub. L. 105-85, div. B, title XXVIII, §2803, Nov. 18, 1997, 111 Stat. 1990; Pub. L. 105-261, div. B, title XXVIII, §2802, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 106-398, §1 [div. B, title XXVIII, §2804], Oct. 30, 2000, 114 Stat. 1654, 1654A-414; Pub. L. 107-314, div. A, title X, §1062(a)(15), div. B, title XXVIII, §2801, Dec. 2, 2002, 116 Stat. 2650, 2702; Pub. L. 108-136, div. B, title XXVIII, §§2803, 2804(a), Nov. 24, 2003, 117 Stat. 1719; Pub. L. 109-163, div. B, title XXVIII, §2802, Jan. 6, 2006, 119 Stat. 3505; Pub. L. 109-364, div. B, title XXVIII, §2804, Oct. 17, 2006, 120 Stat. 2467; Pub.

L. 110-181, div. B, title XXVIII, § 2806(a)-(c), Jan. 28, 2008, 122 Stat. 540, 541; Pub. L. 110-417, div. B, title XXVIII, § 2802, Oct. 14, 2008, 122 Stat. 4719; Pub. L. 111-383, div. B, title XXVIII, § 2803(d), Jan. 7, 2011, 124 Stat. 4459.)

#### HISTORICAL AND REVISION NOTES

##### 1988 ACT

Subsection (h) of this section and section 2673 of this title are based on Pub. L. 98-212, title VII, § 707, Dec. 8, 1983, 97 Stat. 1438.

#### AMENDMENTS

2011—Subsec. (f)(2). Pub. L. 111-383 inserted before period at end “or, if earlier, a period of 14 days has elapsed from the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

2008—Subsec. (b)(2). Pub. L. 110-181, § 2806(a)(1), substituted “paragraphs (3), (4), and (7)” for “paragraphs (3) and (4)”.

Subsec. (b)(5). Pub. L. 110-181, § 2806(a)(2), substituted “paragraphs (2), (3), and (7)” for “paragraphs (2) and (3)”.

Subsec. (b)(7). Pub. L. 110-181, § 2806(a)(3), added par. (7).

Subsec. (b)(7)(A). Pub. L. 110-417 substituted “\$35,000 per unit” for “\$18,620 per unit”.

Subsec. (e)(2). Pub. L. 110-181, § 2806(b), substituted “the Secretaries of the military departments may lease not more than 3,300 units of family housing in Italy” for “the Secretary of the Navy may lease not more than 2,800 units of family housing in Italy, and the Secretary of the Army may lease not more than 500 units of family housing in Italy”.

Subsec. (f). Pub. L. 110-181, § 2806(c), substituted “\$1,000,000” for “\$500,000”.

2006—Subsec. (b)(4)(D). Pub. L. 109-364 added subpar. (D).

Subsec. (e)(4). Pub. L. 109-163 substituted “2,800” for “2,400”.

2003—Subsec. (d)(1). Pub. L. 108-136, § 2804(a), substituted “10 years, or 15 years in the case of leases in Korea,” for “ten years,”.

Subsec. (e)(2). Pub. L. 108-136, § 2803, substituted “2,800” for “2,000”.

2002—Subsec. (b)(2). Pub. L. 107-314, § 1062(a)(15), inserted “time” after “from time to”.

Subsec. (e)(3). Pub. L. 107-314, § 2801(a), substituted “1,175 units” for “800 units”.

Subsec. (e)(4). Pub. L. 107-314, § 2801(b)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 107-314, § 2801(b)(1), (3), redesignated par. (4) as (5) and substituted “(3), and (4)” for “and (3)” in introductory provisions. Former par. (5) redesignated (6).

Subsec. (e)(6). Pub. L. 107-314, § 2801(b)(1), (4), redesignated par. (5) as (6) and substituted “55,775” for “53,000”.

2000—Subsec. (b)(2). Pub. L. 106-398, § 1 [div. B, title XXVIII, § 2804(c)(1)], inserted “, as adjusted from time to time under paragraph (5)” after “per year”.

Subsec. (b)(3). Pub. L. 106-398, § 1 [div. B, title XXVIII, § 2804(c)(2)], substituted “the maximum amount per unit per year in effect under paragraph (2) but does not exceed \$14,000 per unit per year, as adjusted from time to time under paragraph (5)” for “\$12,000 per unit per year but does not exceed \$14,000 per unit per year”.

Subsec. (b)(4). Pub. L. 106-398, § 1 [div. B, title XXVIII, § 2804(a)], designated existing provisions as subpar. (A), struck out last sentence which read as follows: “The total amount for all leases under this paragraph may not exceed \$280,000 per year, and no lease on any individual housing unit may exceed \$60,000 per year.”, and added subpars. (B) and (C).

Subsec. (b)(5), (6). Pub. L. 106-398, § 1 [div. B, title XXVIII, § 2804(b)], added pars. (5) and (6) and struck out former par. (5) which read as follows: “At the beginning

of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for under paragraphs (2), (3), and (4) for the previous fiscal year by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.”

1998—Subsec. (e)(2). Pub. L. 105-261, § 2802(a)(1), inserted “, and the Secretary of the Army may lease not more than 500 units of family housing in Italy,” after “family housing in Italy”.

Subsec. (e)(3). Pub. L. 105-261, § 2802(a)(3), added par. (3). Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 105-261, § 2802(b), substituted “, (2), and (3)” for “and (2)”.

Pub. L. 105-261, § 2802(a)(2), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 105-261, § 2802(a)(2), redesignated par. (4) as (5).

1997—Subsec. (b)(2). Pub. L. 105-85, § 2803(a)(1), substituted “paragraphs (3) and (4)” for “paragraph (3)”.

Subsec. (b)(4). Pub. L. 105-85, § 2803(a)(3), added par. (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 105-85, § 2803(b), substituted “paragraphs (2), (3), and (4)” for “paragraphs (2) and (3)”.

Pub. L. 105-85, § 2803(a)(2), redesignated par. (4) as (5).

1996—Subsec. (e)(1). Pub. L. 104-106, § 2816(1), substituted “450 units” for “300 units” in first sentence and “350 such units” for “220 such units” in second sentence.

Subsec. (e)(2). Pub. L. 104-106, § 2816(2), substituted “450 units” for “300 units”.

1993—Subsec. (b)(2), (3). Pub. L. 103-35 substituted “per year” for “per annum” in par. (2) and in two places in par. (3).

Subsec. (b)(4). Pub. L. 103-160, § 2801(a), added par. (4).

Subsec. (e)(1). Pub. L. 103-160, § 2801(b)(1), (2), substituted “, except that 300 units may be leased in foreign countries for not more than \$25,000 per unit per year” for “as adjusted for foreign currency fluctuation from October 1, 1987” in first sentence and “These maximum lease amounts” for “That maximum lease amount” in second sentence.

Pub. L. 103-35 substituted “per year” for “per annum”.

Subsec. (e)(2) to (4). Pub. L. 103-160, § 2801(b)(3), (4), added pars. (2) and (3) and redesignated former par. (2) as (4).

1991—Subsecs. (g), (h). Pub. L. 102-190 redesignated subsec. (h) as (g) and struck out former subsec. (g) which authorized contracts for lease of family housing units on or near military installations at which there is a validated deficit in family housing. See section 2835 of this title.

1989—Subsec. (b)(2). Pub. L. 101-189, § 2802(1), substituted “\$12,000” for “\$10,000”.

Subsec. (b)(3). Pub. L. 101-189, § 2802(2), substituted “Not” for “(A) Except as provided in subparagraph (B), not”, “\$12,000” for “\$10,000”, and “\$14,000” for “\$12,000” and struck out subpar. (B) which read as follows: “During fiscal years 1986 and 1987, the number of housing units that may be leased pursuant to the provisions of subparagraph (A) may be increased by 500 units for each such fiscal year. The Secretary concerned shall provide written notification to the Committees on Armed Services of the Senate and House of Representatives concerning the location, purpose, and cost of the additional units permitted by this subparagraph. Such notification shall be made periodically as the leases are entered into.”

Subsec. (e)(1). Pub. L. 101-189, § 2802(3), inserted “as adjusted for foreign currency fluctuation from October 1, 1987” after “\$20,000 per unit per annum”.

Subsec. (e)(2). Pub. L. 101-189, § 2802(4), substituted “53,000” for “38,000”.

Subsec. (g)(7). Pub. L. 101-189, § 2805(1), added par. (7) and struck out former par. (7) which provided that this subsection could only be implemented by a pilot pro-

gram, and that in carrying out such program, the Secretary of each military department or the Secretary of Transportation with respect to the Coast Guard, could not enter into more than two contracts under this subsection, and any such contract could not be for more than 300 family housing units.

Subsec. (g)(8). Pub. L. 101-189, §2805, redesignated par. (9) as (8), substituted “1991” for “1989”, and struck out former par. (8) which authorized the Secretaries of the military departments and the Secretary of Transportation to enter into contracts for family housing units in addition to those authorized in par. (7).

Subsec. (g)(9), (10). Pub. L. 101-189, §2805(2), redesignated par. (10) as (9). Former par. (9) redesignated (8). 1988—Subsec. (e)(2). Pub. L. 100-456 substituted “\$38,000” for “\$36,000”.

Subsec. (h). Pub. L. 100-370 added subsec. (h).

1987—Subsec. (a)(1). Pub. L. 100-26 substituted “armed forces” for “Armed Forces”.

Subsec. (b)(2). Pub. L. 100-180, §2309(b)(1), inserted “per unit per annum” after “\$10,000”.

Subsec. (b)(3)(A). Pub. L. 100-180, §2309(b)(2), substituted “\$10,000 per unit per annum but does not exceed \$12,000 per unit per annum” for “\$10,000 but does not exceed \$12,000”.

Subsec. (c). Pub. L. 100-26 substituted “armed forces” for “Armed Forces”.

Subsec. (e)(1). Pub. L. 100-180, §2309(a)(1), substituted “\$20,000 per unit per annum” for “\$16,800”.

Subsec. (e)(2). Pub. L. 100-180, §2309(a)(2), substituted “\$36,000” for “\$32,000”.

Subsec. (f). Pub. L. 100-180, §2311, substituted “\$500,000” for “\$250,000”.

Subsec. (g)(1). Pub. L. 100-180, §2306(a)(1), inserted “, or the Secretary of Transportation with respect to the Coast Guard,” after “military department” and “or rehabilitated to residential use” after “constructed”.

Subsec. (g)(7)(A). Pub. L. 100-180, §2306(a)(2), inserted “, or the Secretary of Transportation with respect to the Coast Guard,” after “military department”.

Subsec. (g)(8)(C). Pub. L. 100-180, §2306(a)(3), added subpar. (C).

Subsec. (g)(9). Pub. L. 100-180, §2306(a)(4), substituted “1989” for “1988”.

1986—Subsec. (b)(2). Pub. L. 99-661, §2702(d)(1), substituted “\$10,000” for “the amount specified by law as the maximum annual domestic family housing unit lease amount”.

Subsec. (b)(3)(A). Pub. L. 99-661, §2702(d)(2), substituted “\$10,000 but does not exceed \$12,000” for “the maximum annual domestic family housing unit lease amount but does not exceed 120 percent of that amount”.

Subsec. (e)(1). Pub. L. 99-661, §2714, substituted “220” for “200”.

Pub. L. 99-661, §2702(e), substituted “\$16,800” for “the amount specified by law as the maximum annual foreign family housing unit lease amount”.

Subsec. (e)(2). Pub. L. 99-661, §2702(f), substituted “is 32,000” for “shall be specified by law”.

Subsec. (f). Pub. L. 99-661, §2702(g), substituted “\$250,000” for “the amount specified by law for such purpose”.

Subsec. (g)(8)(B). Pub. L. 99-661, §2713(b)(1), substituted “1,600” for “600”.

Subsec. (g)(9). Pub. L. 99-661, §2713(b)(2), substituted “September 30, 1988” for “September 30, 1986”.

Subsec. (g)(10). Pub. L. 99-661, §2713(b)(3), added par. (10).

1985—Subsec. (b)(3). Pub. L. 99-167, §805, designated existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B), not” for “Not”, and added subpar. (B).

Subsec. (d). Pub. L. 99-167, §803, designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(8). Pub. L. 99-167, §801(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g)(9). Pub. L. 99-167, §801(b)(1), substituted “September 30, 1986” for “October 1, 1985”.

1984—Subsec. (g)(8), (9). Pub. L. 98-407 added par. (8) and redesignated former par. (8) as (9).

1983—Subsec. (g). Pub. L. 98-115 added subsec. (g).

1982—Subsec. (e)(1). Pub. L. 97-321 inserted “the” after “may be waived by” in second sentence.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Section 2806(c) of Pub. L. 102-190 provided that: “Section 2835 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991]. The amendment made by subsection (b)(1) [amending this section] shall not affect the validity of any contract entered into before that date under section 2828(g) of such title, as in effect on the day before that date.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100-456, set out as a note under section 2391 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 806(c) of Pub. L. 98-407 provided that: “The amendments made by this section [amending this section and provisions set out as a note under section 2821 of this title] shall take effect on October 1, 1984.”

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### § 2829. Multi-year contracts for supplies and services

The Secretary concerned may make contracts for periods of up to four years for supplies and services for the management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for that year.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 162.)

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### § 2830. Occupancy of substandard family housing units

(a)(1) A member of the uniformed services with dependents may, without loss of the member's basic allowance for housing under section 403 of title 37, occupy a substandard family housing unit under the jurisdiction of the Secretary concerned.

(2) Occupancy of a family housing unit under paragraph (1) shall be subject to a charge against the member's basic allowance for housing in the amount of the fair rental value of the housing unit. However, such a charge may not be made in an amount in excess of 75 percent of the amount of such allowance.

(b)(1) The Secretary concerned may lease substandard family housing units to members of any of the uniformed services for occupancy by such members.

(2) The authority to enter into leases under paragraph (1) shall be exercised—

(A) in the case of a lease by the Secretary of a military department, subject to regulations prescribed by the Secretary of Defense; and

(B) in the case of a lease by the Secretary of Homeland Security with respect to the Coast

Guard when it is not operating as a service in the Navy, subject to regulations prescribed by that Secretary.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 162; amended Pub. L. 99-348, title III, §304(a)(4), July 1, 1986, 100 Stat. 703; Pub. L. 100-180, div. A, title VI, §632(a), Dec. 4, 1987, 101 Stat. 1105; Pub. L. 105-85, div. A, title VI, §603(d)(2)(B), Nov. 18, 1997, 111 Stat. 1782; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

#### AMENDMENTS

2002—Subsec. (b)(2)(B). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

1997—Subsec. (a)(1). Pub. L. 105-85, §603(d)(2)(B)(i), substituted “basic allowance for housing under section 403 of title 37” for “basic allowance for quarters”.

Subsec. (a)(2). Pub. L. 105-85, §603(d)(2)(B)(ii), substituted “basic allowance for housing” for “basic allowance for quarters”.

1987—Subsec. (a)(1). Pub. L. 100-180, §632(a)(1), substituted “Secretary concerned” for “Secretary of a military department”.

Subsec. (b). Pub. L. 100-180, §632(a)(2), (3), designated existing provisions as par. (1), substituted “The Secretary concerned” for “Subject to regulations prescribed by the Secretary of Defense, the Secretary of a military department”, and added par. (2).

1986—Subsec. (c). Pub. L. 99-348 struck out subsec. (c) which defined “uniformed services” in this section to mean the armed forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration. See section 101 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105-85, set out as a note under section 5561 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### § 2831. Military family housing management account

(a) **ESTABLISHMENT.**—There is on the books of the Treasury an account known as the Department of Defense Military Family Housing Management Account (hereinafter in this section referred to as the “account”). The account shall be used for the management and administration of funds appropriated or otherwise made available to the Department of Defense for military family housing programs.

(b) **CREDITS TO ACCOUNT.**—The account shall be administered as a single account. There shall be transferred into the account—

(1) appropriations for the purpose of, or which are available for, the payment of costs arising in connection with the construction, acquisition, leasing, relocation, operation and maintenance, and disposal of military family housing, including the cost of principal and interest charges, and insurance

premiums, arising in connection with the acquisition of such housing, and mortgage insurance premiums payable under section 222(c)<sup>1</sup> of the National Housing Act (12 U.S.C. 1715m(c));

(2) proceeds from the rental of family housing and mobile home facilities under the control of a military department, reimbursements from the occupants of such facilities for services rendered (including utility costs), funds obtained from individuals as a result of losses, damages, or destruction to such facilities caused by the abuse or negligence of such individuals, and reimbursements from other Government agencies for expenditures from the account; and

(3) proceeds of the handling and the disposal of family housing of a military department (including related land and improvements), whether carried out by a military department or any other Federal agency, but less those expenses payable pursuant to section 572(a) of title 40.

(c) **AVAILABILITY OF AMOUNTS IN ACCOUNT.**—Amounts in the account shall remain available until spent.

(d) **USE OF ACCOUNT.**—The Secretary concerned may make obligations against the account, in such amounts as may be specified from time to time in appropriation Acts, for the purpose of defraying, in the manner and to the extent authorized by law, the costs referred to in subsection (b).

(e) **REPORTS ON GENERAL OFFICERS AND FLAG OFFICERS QUARTERS.**—(1) As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense shall submit a report—

(A) identifying each family housing unit used, or intended for use, as quarters for a general officer or flag officer for which the total operation, maintenance, and repair costs for the unit are anticipated to exceed \$35,000 in the next fiscal year;

(B) for each family housing unit identified under subparagraph (A), specifying the total of such anticipated operation, maintenance, and repair costs for the unit;

(C) identifying each family housing unit in excess of 6,000 square feet used, or intended for use, as quarters for a general officer or flag officer;

(D) for each family housing unit identified under subparagraph (C), specifying any alternative and more efficient use to which the unit could be converted (which would include any costs necessary to convert the unit) and containing an explanation of the reasons why the unit is not being converted to the alternative use; and

(E) for each family housing unit identified under subparagraph (C) for which costs under subparagraph (A) or new construction costs are anticipated to exceed \$100,000 in the next fiscal year, specifying any alternative use to which the unit could be converted (which would include any costs necessary to convert

<sup>1</sup> See References in Text note below.



the unit) and an estimate of the costs to demolish and rebuild the unit to private sector standards.

(2) Not later than 120 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report specifying, for each family housing unit used as quarters for a general officer or flag officer at any time during that fiscal year, the total expenditures for operation and maintenance, utilities, lease, and repairs of the unit during that fiscal year.

(f) NOTICE AND WAIT REQUIREMENT.—(1) Except as provided in paragraphs (2) and (3), the Secretary concerned may not carry out a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project will or may result in the total operation, maintenance, and repair costs for the unit for the fiscal year to exceed \$35,000, until—

(A) the Secretary concerned submits to the congressional defense committees, in writing, a justification of the need for the maintenance or repair project and an estimate of the cost of the project; and

(B) a period of 21 days has expired following the date on which the justification and estimate are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and estimate are provided in an electronic medium pursuant to section 480 of this title.

(2) The project justification and cost estimate required by paragraph (1)(A) may be submitted after the commencement of a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project is a necessary environmental remediation project for the unit or is necessary for occupant safety or security, and the need for the project arose after the submission of the most recent report under subsection (e).

(3) Paragraph (1) shall not apply in the case of a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the unit was identified in the most recent report submitted under subsection (e) and the cost of the maintenance or repair project was included in the total of anticipated operation, maintenance, and repair costs for the unit specified in the report.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 162; amended Pub. L. 107-217, §3(b)(19), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108-375, div. B, title XXVIII, §2802(a), (b), Oct. 28, 2004, 118 Stat. 2119, 2120; Pub. L. 109-364, div. A, title X, §1071(a)(26), div. B, title XXVIII, §2805, Oct. 17, 2006, 120 Stat. 2399, 2467.)

#### REFERENCES IN TEXT

Section 222(c) of the National Housing Act (12 U.S.C. 1715m(c)), referred to in subsec. (b)(1), was repealed by Pub. L. 110-289, div. B, title I, §2120(a)(5), July 30, 2008, 122 Stat. 2835.

#### AMENDMENTS

2006—Subsecs. (a) to (d). Pub. L. 109-364, §2805(b)(1)–(4), inserted subsec. headings.

Subsec. (e). Pub. L. 109-364, §2805(b)(5), struck out “Cost of” before “General Officers” in heading.

Subsec. (e)(1)(B). Pub. L. 109-364, §2805(a)(2)(A), substituted “identified under subparagraph (A)” for “so identified”.

Subsec. (e)(1)(C) to (E). Pub. L. 109-364, §2805(a)(1), (2)(B), (3), added subpars. (C) to (E).

Subsec. (f)(2). Pub. L. 109-364, §1071(a)(26), substituted “environmental” for “enviromental”.

2004—Subsecs. (e), (f). Pub. L. 108-375 added subsecs. (e) and (f).

2002—Subsec. (b)(3). Pub. L. 107-217 substituted “section 572(a) of title 40” for “section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b))”.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### § 2832. Homeowners assistance program

The Secretary of Defense may exercise the authority provided in section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374).

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 163; amended Pub. L. 101-189, div. B, title XXVIII, §2831(a), Nov. 29, 1989, 103 Stat. 1660; Pub. L. 104-106, div. A, title XV, §1502(a)(26), Feb. 10, 1996, 110 Stat. 506; Pub. L. 107-107, div. A, title X, §1048(e)(11), Dec. 28, 2001, 115 Stat. 1228.)

#### AMENDMENTS

2001—Pub. L. 107-107 struck out “(a)” before “The Secretary of Defense” and struck out subsec. (b) which read as follows:

“(b)(1) Subject to paragraph (2) and notwithstanding subsection (i) of section 1013 of the Act referred to in subsection (a)—

“(A) the Secretary of Defense may transfer not more than \$31,000,000 from the Department of Defense Base Closure Account, established by section 207 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 102 Stat. 2627), to the fund established pursuant to subsection (d) of such section 1013 for use as part of such fund; and

“(B) any funds so transferred shall be available for obligation and expenditure for the same purposes that funds appropriated to such fund are available, except that such funds may not be obligated after September 30, 1991.

“(2) Amounts may be transferred under paragraph (1) only after the date on which the appropriate committees of Congress receive from the Secretary written notice of, and justification for, the transfer.”

1996—Subsec. (b)(2). Pub. L. 104-106 substituted “appropriate committees of Congress” for “Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives”.

1989—Pub. L. 101-189 designated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 2831(b) of Pub. L. 101-189 provided that: “The amendments made by subsection (a) [amending this section] shall apply only to funds appropriated or transferred to, or otherwise deposited in, the Department of Defense Base Closure Account for, or during, fiscal years beginning after September 30, 1989.”

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

**§ 2833. Family housing support**

Amounts authorized by law for support of military family housing include amounts for—

- (1) operating expenses;
- (2) leasing expenses;
- (3) maintenance of real property expenses;
- (4) payments of principal and interest on mortgage debts incurred; and
- (5) payments of mortgage insurance premiums authorized under section 222<sup>1</sup> of the National Housing Act (12 U.S.C. 1715m).

(Added Pub. L. 99-167, title VIII, §804(b)(1), Dec. 3, 1985, 99 Stat. 987.)

**REFERENCES IN TEXT**

Section 222 of the National Housing Act (12 U.S.C. 1715m), referred to in par. (5), was repealed by Pub. L. 110-289, div. B, title I, §2120(a)(5), July 30, 2008, 122 Stat. 2835.

**§ 2834. Participation in Department of State housing pools**

(a) The Secretary concerned may enter into an agreement with the Secretary of State under which the Secretary of State agrees to provide housing and related services for personnel under the jurisdiction of the Secretary concerned who are assigned to duty in a foreign country if the Secretary concerned determines—

- (1) that there is a shortage of adequate housing in the area of the foreign country in which such personnel are assigned to duty; and
- (2) that participation in the Department of State housing pool is the most cost-effective means of providing housing for such personnel.

The Secretary concerned shall reimburse the Secretary of State, as provided in the agreement, for housing and related services furnished personnel under the jurisdiction of the Secretary concerned.

(b) The maximum lease amounts specified in section 2828(e)(1) of this title for the rental of family housing in foreign countries shall not apply to housing made available to the Department of Defense under this section. To the extent that the lease amount for units of housing made available under this subsection exceeds such maximum lease amounts, such units shall not be counted in applying the limitation contained in such section on the number of units of family housing for which the Secretary concerned may waive such maximum lease amounts.

(Added Pub. L. 99-167, title VIII, §808(a), Dec. 3, 1985, 99 Stat. 989; amended Pub. L. 101-510, div. A, title XIII, §1301(18), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 103-160, div. B, title XXVIII, §2806, Nov. 30, 1993, 107 Stat. 1887.)

**AMENDMENTS**

1993—Subsec. (b). Pub. L. 103-160 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “In computing the number of leases for which the maximum lease amount may be waived by the Secretary concerned under the second sentence of section 2828(e)(1) of this title, housing made available to the Department of Defense under this section shall be included.”

<sup>1</sup> See References in Text note below.

1990—Subsecs. (b), (c). Pub. L. 101-510 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “Agreements entered into with the Secretary of State under this section may not be executed until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed agreement, and (2) a period of 21 days has elapsed after the day on which the notification is received by the committees.”

**§ 2835. Long-term leasing of military family housing to be constructed**

(a) **BUILD AND LEASE AUTHORIZED.**—Subject to subsection (b), the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into a contract for the lease of family housing units to be constructed or rehabilitated to residential use near a military installation within the United States under the Secretary's jurisdiction at which there is a shortage of family housing. Housing units leased under this section shall be assigned, without rental charge, as family housing to members of the armed forces who are eligible for assignment to military family housing.

(b) **SUBMISSION AND AUTHORIZATION OF PROPOSED LEASE CONTRACTS.**—(1) The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into a lease contract under subsection (a) for such military housing as is authorized by law for the purposes of this section.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing projects for which lease contracts are proposed to be entered into under subsection (a) in such fiscal year.

(c) **COMPETITIVE PROCESS.**—Each contract under subsection (a) shall be awarded through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Homeland Security, as the case may be, shall solicit bids or proposals for a contract for the lease of military housing authorized in accordance with subsection (b)(1). Such a contract may provide for the contractor of the housing facilities to operate and maintain such housing facilities during the term of the lease.

(d) **CONDITIONS ON OBLIGATION OF FUNDS.**—A lease contract entered into for a military housing project under subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment entered into under the authority of this section

does not constitute an obligation of the United States.

(4) A requirement that housing units constructed pursuant to the contract shall be constructed—

(A) to Department of Defense specifications, in the case of a Department of Defense contract; and

(B) to Department of Homeland Security specifications, in the case of a contract for the Coast Guard.

(e) LEASE TERM.—A contract under this section may be for any period not in excess of 20 years (excluding the period required for construction of the housing facilities).

(f) RIGHT OF FIRST REFUSAL TO ACQUIRE.—A contract under this section shall provide that, upon the termination of the lease period, the United States shall have the right of first refusal to acquire all right, title, and interest to the housing facilities constructed and leased under the contract.

(g) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the lease of housing facilities under this section until—

(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost-effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 days has expired following the date on which the economic analysis is received by those committees or, if earlier, a period of 14 days has elapsed from the date on which a copy of the analysis is provided in an electronic medium pursuant to section 480 of this title.

(h) SUPPORT BUILDINGS.—A contract for the lease of family housing under this section may include provision for the lease of a child care center, civic center building, and similar type buildings constructed for the support of family housing.

(Added Pub. L. 102-190, div. B, title XXVIII, § 2806(a)(1), Dec. 5, 1991, 105 Stat. 1539; amended Pub. L. 107-296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111-383, div. B, title XXVIII, § 2803(e), Jan. 7, 2011, 124 Stat. 4459.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in subsec. (g) of section 2828 of this title, prior to repeal by Pub. L. 102-190, § 2806(b)(1).

#### AMENDMENTS

2011—Subsec. (g)(2). Pub. L. 111-383 struck out “calendar” after “21” and inserted before period at end “or, if earlier, a period of 14 days has elapsed from the date on which a copy of the analysis is provided in an electronic medium pursuant to section 480 of this title”.

2002—Subsecs. (a) to (c), (d)(4)(B), (g)(1). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation” wherever appearing.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of

Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

#### EFFECTIVE DATE

Section applicable with respect to contracts entered into under this section on or after Dec. 5, 1991, see section 2806(c) of Pub. L. 102-190, set out as an Effective Date of 1991 Amendment note under section 2828 of this title.

### § 2835a. Use of military family housing constructed under build and lease authority to house other members

(a) INDIVIDUAL ASSIGNMENT OF MEMBERS WITHOUT DEPENDENTS.—(1) To the extent that the Secretary concerned determines that military family housing constructed and leased under section 2835 of this title is not needed to house members of the armed forces eligible for assignment to military family housing, the Secretary may assign, without rental charge, members without dependents to the housing.

(2) A member without dependents who is assigned to housing pursuant to paragraph (1) shall be considered to be assigned to quarters pursuant to section 403(e) of title 37.

(b) CONVERSION TO LONG-TERM LEASING OF MILITARY UNACCOMPANIED HOUSING.—(1) If the Secretary concerned determines that military family housing constructed and leased under section 2835 of this title is excess to the long-term needs of the family housing program of the Secretary, the Secretary may convert the lease contract entered into under subsection (a) of such section into a long-term lease of military unaccompanied housing.

(2) The term of the lease contract for military unaccompanied housing converted from military family housing under paragraph (1) may not exceed the remaining term of the lease contract for the family housing so converted.

(c) NOTICE AND WAIT REQUIREMENTS.—(1) The Secretary concerned may not convert military family housing to military unaccompanied housing under subsection (b) until—

(A) the Secretary submits to the congressional defense committees a notice of the intent to undertake the conversion; and

(B) a period of 21 days has expired following the date on which the notice is received by the committees or, if earlier, a period of 14 days has expired following the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title.

(2) The notice required by paragraph (1) shall include—

(A) an explanation of the reasons for the conversion of the military family housing to military unaccompanied housing;

(B) a description of the long-term lease to be converted;

(C) amounts to be paid under the lease; and

(D) the expiration date of the lease.

(d) APPLICATION TO HOUSING LEASED UNDER FORMER AUTHORITY.—This section also shall apply to housing initially acquired or constructed under the former section 2828(g) of this title (commonly known as the “Build to Lease program”), as added by section 801 of the Military Construction Authorization Act, 1984 (Public Law 98-115; 97 Stat. 782).

(Added Pub. L. 110-417, div. B, title XXVIII, § 2803(a), Oct. 14, 2008, 122 Stat. 4719.)

#### REFERENCES IN TEXT

Section 2828(g) of this title (commonly known as the “Build to Lease program”), as added by section 801 of the Military Construction Authorization Act, 1984, referred to in subsec. (d), means the subsection (g) added to section 2828 of this title by section 801 of Pub. L. 98-115, which was repealed by Pub. L. 102-190, div. B, title XXVIII, § 2806(b), Dec. 5, 1991, 105 Stat. 1540.

#### § 2836. Military housing rental guarantee program

(a) **AUTHORITY.**—Subject to subsection (b), the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into an agreement to assure the occupancy of rental housing to be constructed or rehabilitated to residential use by a private developer or by a State or local housing authority on private land, on land owned by a State or local government, or on land owned by the United States, if the housing is to be located on or near a new military installation or an existing military installation that has a shortage of housing to meet the requirements of eligible members of the armed forces (with or without accompanying dependents). The authority provided under this subsection shall be exercised under uniform regulations prescribed by the Secretary of Defense.

(b) **SUBMISSION AND AUTHORIZATION OF PROPOSED AGREEMENTS.**—(1) The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into agreements pursuant to subsection (a) for such military housing rental guaranty projects as are authorized by law.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing rental guaranty projects for which agreements are proposed to be entered into under subsection (a) in that fiscal year.

(c) **CONTENT OF AGREEMENT.**—An agreement under subsection (a)—

(1) may not assure the occupancy of more than 97 percent of the units constructed under the agreement;

(2) shall establish initial rental rates that are not more than rates for comparable rental dwelling units in the same general market area and may include an escalation clause;

(3) may apply to existing housing;

(4) shall require that the housing units be constructed—

(A) in the case of a Department of Defense agreement, to Department of Defense specifications or, at the discretion of the Secretary of the military department concerned, in compliance with the local building codes; and

(B) in the case of an agreement for the Coast Guard, to Department of Homeland Security specifications;

(5) may not be for a term in excess of 25 years;

(6) may not be renewed unless the project is located on government owned land, in which case the renewal period may not exceed the original contract term;

(7) may not assure more than an amount equivalent to the shelter rent of the housing units, determined on the basis of amortizing initial construction costs;

(8) may only be entered into to the extent that there is a shortage in military family housing;

(9) may only be entered into if existing military-controlled housing at all installations in the commuting area (except for a new installation or an installation for which there is projected a significant increase in the number of families due to an increase in the number of authorized personnel) has exceeded 97 percent use for a period of not less than 18 consecutive months immediately preceding the date on which the agreement is entered into, excluding units temporarily inactivated for major repair or improvements;

(10) shall provide for priority of occupancy for military families;

(11) shall include a provision authorizing the Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard, to take such action as the Secretary considers appropriate to protect the interests of the United States, including rendering the agreement null and void if, in the opinion of the Secretary, the owner of the housing fails to maintain a satisfactory level of operation and maintenance;

(12) may provide in the agreement for the rental of a child care center, civic center building, and similar type buildings constructed for the support of family housing;

(13) may provide that utilities, trash collection, snow removal, and entomological services will be furnished by the Federal Government at no cost to the occupant to the same extent that these items are provided to occupants of housing owned by the Federal Government; and

(14) may require that rent collection and operation and maintenance services in connection with the housing be under the terms of a separate agreement or be carried out by personnel of the Federal Government.

(d) **CONDITIONS ON OBLIGATION OF FUNDS.**—An agreement entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the agreement in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the agreement when and to the extent that funds are appropriated for such project for such fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(e) **COMPETITIVE PROCESS.**—An agreement under subsection (a) shall be made through the

use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Homeland Security, as the case may be, shall solicit bids or proposals for a guaranty agreement for each military housing rental guaranty project authorized in accordance with subsection (b).

(f) NOTICE AND WAIT REQUIREMENTS.—An agreement may not be entered into under subsection (a) until—

(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed agreement is cost effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 days has expired following the date on which the economic analysis is received by those committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the economic analysis is provided in an electronic medium pursuant to section 480 of this title.

(g) DISPUTES.—The Secretary concerned may require that disputes arising under an agreement entered into under subsection (a) be decided in accordance with the procedures provided for by chapter 71 of title 41.

(Added Pub. L. 102-190, div. B, title XXVIII, §2809(a)(1), Dec. 5, 1991, 105 Stat. 1541; amended Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108-136, div. A, title X, §1031(a)(43), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 111-350, §5(b)(48), Jan. 4, 2011, 124 Stat. 3846.)

#### PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 98-115, title VIII, §802, Oct. 11, 1983, 97 Stat. 783, as amended, which was set out as a note under section 2821 of this title, prior to repeal by Pub. L. 102-190, §2809(b).

#### AMENDMENTS

2011—Subsec. (g). Pub. L. 111-350 substituted “chapter 71 of title 41” for “the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)”.

2003—Subsec. (f)(2). Pub. L. 108-136 substituted “21 days” for “21 calendar days” and inserted before period at end “or, if over sooner, a period of 14 days has expired following the date on which a copy of the economic analysis is provided in an electronic medium pursuant to section 480 of this title”.

2002—Subsecs. (a), (b), (c)(4)(B), (11), (e), (f)(1). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation” wherever appearing.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

#### EFFECTIVE DATE

Section 2809(c) of Pub. L. 102-190 provided that: “Section 2836 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991]. The amendment

made by subsection (b) [repealing provisions set out as a note under section 2821 of this title] shall not affect the validity of any contract entered into before that date under section 802 of the Military Construction Authorization Act, 1984 (10 U.S.C. 2821 note), as in effect on the day before that date.”

### §2837. Limited partnerships with private developers of housing

(a) LIMITED PARTNERSHIPS.—(1) In order to meet the housing requirements of members of the armed forces, and the dependents of such members, at a military installation described in paragraph (2), the Secretary of a military department may enter into a limited partnership with one or more private developers to encourage the construction of housing and accessory structures within commuting distance of the installation. The Secretary may contribute not less than five percent, but not more than 35 percent, of the development costs under a limited partnership.

(2) Paragraph (1) applies to a military installation under the jurisdiction of the Secretary concerned at which there is a shortage of suitable housing to meet the requirements of members and dependents referred to in such paragraph.

(b) COLLATERAL INCENTIVE AGREEMENTS.—The Secretary concerned may also enter into collateral incentive agreements with private developers who enter into a limited partnership under subsection (a) to ensure that, where appropriate—

(1) a suitable preference will be afforded members of the armed forces in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the limited partnership; or

(2) the rental rates or sale prices, as the case may be, for some or all of such units will be affordable for such members.

(c) SELECTION OF INVESTMENT OPPORTUNITIES.—(1) The Secretary concerned shall use publicly advertised, competitively bid or competitively negotiated, contracting procedures, as provided in chapter 137 of this title, to enter into limited partnerships under subsection (a).

(2) When a decision is made to enter into a limited partnership under subsection (a), the Secretary concerned shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include the justification for the limited partnership, the terms and conditions of the limited partnership, a description of the development costs for projects under the limited partnership, and a description of the share of such costs to be incurred by the Secretary concerned. The Secretary concerned may then enter into the limited partnership only after the end of the 21-day period beginning on the date the report is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(d) ACCOUNT.—(1) There is hereby established on the books of the Treasury an account to be known as the “Defense Housing Investment Account”.

(2) There shall be deposited into the Account—

(A) such funds as may be authorized for and appropriated to the Account; and

(B) any proceeds received by the Secretary concerned from the repayment of investments or profits on investments of the Secretary under subsection (a).

(3) From such amounts as are provided in advance in appropriation Acts, funds in the Account shall be available to the Secretaries concerned in amounts determined by the Secretary of Defense for contracts, investments, and expenses necessary for the implementation of this section.

(4) The Secretary concerned may not enter into a contract in connection with a limited partnership under subsection (a) or a collateral incentive agreement under subsection (b) unless a sufficient amount of the unobligated balance of the funds in the Account is available to the Secretary, as of the time the contract is entered into, to satisfy the total obligations to be incurred by the United States under the contract.

[(e) Repealed. Pub. L. 104-106, div. B, title XXVIII, §2802(d)(1), Feb. 10, 1996, 110 Stat. 552.]

(f) REPORT.—Not later than 60 days after the end of each fiscal year in which activities are carried out under this section, the Secretaries concerned shall jointly transmit to Congress a report specifying the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of all other expenditures made pursuant to such section during such fiscal year.

(g) TRANSFER OF LANDS PROHIBITED.—Nothing in this section shall be construed to permit the Secretary concerned, as part of a limited partnership entered into under this section, to transfer the right, title, or interest of the United States in any real property under the jurisdiction of the Secretary concerned.

(h) EXPIRATION AND TERMINATION OF AUTHORITY.—The authority of the Secretary concerned to enter into a limited partnership under this section shall expire on September 30, 2000.

(Added Pub. L. 103-337, div. B, title XXVIII, §2803(a), Oct. 5, 1994, 108 Stat. 3051; amended Pub. L. 104-106, div. B, title XXVIII, §2802, Feb. 10, 1996, 110 Stat. 551; Pub. L. 106-65, div. A, title X, §1066(a)(28), Oct. 5, 1999, 113 Stat. 772; Pub. L. 108-136, div. A, title X, §1031(a)(44), Nov. 24, 2003, 117 Stat. 1602.)

#### AMENDMENTS

2003—Subsec. (c)(2). Pub. L. 108-136 inserted before period at end “or, if earlier, the end of the 14-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title”.

1999—Subsec. (d)(2). Pub. L. 106-65 inserted “and” at end of subpar. (A), substituted a period for “; and” at end of subpar. (B), and struck out subpar. (C) which read as follows: “any unobligated balances which remain in the Navy Housing Investment Account as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996.”

1996—Subsec. (a)(1). Pub. L. 104-106, §2802(b)(1), substituted “the Secretary of a military department” for “the Secretary of the Navy”.

Pub. L. 104-106, §2802(a)(1), substituted “of the armed forces” for “of the naval service”.

Subsec. (a)(2). Pub. L. 104-106, §2802(b)(2), substituted “Secretary concerned” for “Secretary”.

Subsec. (b). Pub. L. 104-106, §2802(b)(2), substituted “Secretary concerned” for “Secretary”.

Subsec. (b)(1). Pub. L. 104-106, §2802(a)(2), substituted “of the armed forces” for “of the naval service”.

Subsec. (c). Pub. L. 104-106, §2802(b)(2), substituted “Secretary concerned” for “Secretary” wherever appearing.

Subsec. (d). Pub. L. 104-106, §2802(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

“(d) ACCOUNT.—(1) There is hereby established on the books of the Treasury an account to be known as the ‘Navy Housing Investment Account’.

“(2) There shall be deposited into the Account—

“(A) such funds as may be authorized for and appropriated to the Account; and

“(B) any proceeds received by the Secretary from the repayment of investments or profits on investments of the Secretary under subsection (a).

“(3) In such amounts as is provided in advance in appropriation Acts, the Account shall be available for contracts, investments, and expenses necessary for the implementation of this section.

“(4) The Secretary may not enter into a contract in connection with a limited partnership under subsection (a) or a collateral incentive agreement under subsection (b) unless the Account contains sufficient funds, as of the time the contract is entered into, to satisfy the total obligations to be incurred by the United States under the contract.”

Subsec. (e). Pub. L. 104-106, §2802(d)(1), struck out subsec. (e) which related to establishment of Navy Housing Investment Board.

Subsec. (f). Pub. L. 104-106, §2802(e), substituted “activities are carried out” for “the Secretary carries out activities” and “the Secretaries concerned shall jointly” for “the Secretary shall”.

Subsec. (g). Pub. L. 104-106, §2802(g), struck out “Navy” after “Transfer of” in heading.

Pub. L. 104-106, §2802(b)(2), substituted “Secretary concerned” for “Secretary” in two places.

Subsec. (h). Pub. L. 104-106, §2802(f), substituted “September 30, 2000” for “September 30, 1999”.

Pub. L. 104-106, §2802(d)(2), substituted “Authority” for “Authorities” in heading and struck out “(1)” before “The authority” and par. (2) which read as follows: “The Navy Housing Investment Board shall terminate on November 30, 1999.”

Pub. L. 104-106, §2802(b)(2), substituted “Secretary concerned” for “Secretary” in par. (1).

#### § 2838. Leasing of military family housing to Secretary of Defense

(a) AUTHORITY.—(1) The Secretary of a military department may lease to the Secretary of Defense military family housing in the National Capital Region (as defined in section 2674(f) of this title).

(2) In determining the military housing unit to lease under this section, the Secretary of Defense should first consider any available military housing units that are already substantially equipped for executive communications and security.

(b) RENTAL RATE.—A lease under subsection (a) shall provide for the payment by the Secretary of Defense of consideration in an amount equal to 105 percent of the monthly rate of basic allowance for housing prescribed under section 403(b) of title 37 for a member of the uniformed services in the pay grade of O-10 with dependents assigned to duty at the military installation on which the leased housing unit is located. A rate so established shall be considered the fair market value of the lease interest.

(c) TREATMENT OF PROCEEDS.—(1) The Secretary of a military department shall deposit all

amounts received pursuant to leases entered into by the Secretary under this section into a special account in the Treasury established for such military department.

(2) The proceeds deposited into the special account of a military department pursuant to paragraph (1) shall be available to the Secretary of that military department, without further appropriation, for the maintenance, protection, alteration, repair, improvement, or restoration of military housing on the military installation at which the housing leased pursuant to subsection (a) is located.

(Added Pub. L. 110-417, div. B, title XXVIII, § 2804(a), Oct. 14, 2008, 122 Stat. 4720.)

### SUBCHAPTER III—ADMINISTRATION OF MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

Sec.	
2851.	Supervision of military construction projects.
2852.	Military construction projects: waiver of certain restrictions.
2853.	Authorized cost and scope of work variations.
2854.	Restoration or replacement of damaged or destroyed facilities.
2854a.	Conveyance of damaged or deteriorated military family housing; use of proceeds.
2855.	Law applicable to contracts for architectural and engineering services and construction design.
2856.	Military unaccompanied housing: local comparability of floor areas.
[2857.	Renumbered.]
2858.	Limitation on the use of funds for expediting a construction project.
2859.	Construction requirements related to anti-terrorism and force protection or urban-training operations.
2860.	Availability of appropriations.
2861.	Military construction projects in connection with industrial facility investment program.
2862.	Turn-key selection procedures.
2863.	Payment of contractor claims.
[2864, 2865.	Repealed.]
2866.	Water conservation at military installations.
2867.	Energy monitoring and utility control system specification for military construction and military family housing activities.
2868.	Utility services: furnishing for certain buildings.
2869.	Conveyance of property at military installations to limit encroachment.

#### AMENDMENTS

2011—Pub. L. 111-383, div. A, title X, § 1075(d)(23), Jan. 7, 2011, 124 Stat. 4374, made technical amendment to directory language of Pub. L. 111-84, § 2804(d)(2). See 2009 Amendment note below.

2009—Pub. L. 111-84, div. B, title XXVIII, § 2841(a)(2), Oct. 28, 2009, 123 Stat. 2680, added item 2867.

Pub. L. 111-84, div. B, title XXVIII, § 2804(d)(2), Oct. 28, 2009, 123 Stat. 2662, as amended by Pub. L. 111-383, div. A, title X, § 1075(d)(23), Jan. 7, 2011, 124 Stat. 4374, substituted “Conveyance of property at military installations to limit encroachment” for “Conveyance of property at military installations to support military construction or limit encroachment” in item 2869.

2006—Pub. L. 109-364, div. B, title XXVIII, §§ 2807(a)(2), 2808(b)(2), 2809(b), 2810(b), 2811(f)(2), 2851(c)(4), Oct. 17, 2006, 120 Stat. 2468-2471, 2473, 2495, added item 2861, inserted “or urban-training operations” after “force protection” in item 2859, substituted “Military unaccompanied housing: local comparability of floor areas” for “Limitations on barracks space by pay grade” in item

2856 and “to support military construction or limit encroachment” for “closed or realigned to support military construction” in item 2869, and struck out items 2857 “Use of renewable forms of energy in new facilities”, 2864 “Military construction contracts on Guam”, 2865 “Energy savings at military installations”, and 2867 “Sale of electricity from alternate energy and co-generation production facilities”.

Pub. L. 109-163, div. B, title XXVIII, § 2804(c)(2), Jan. 6, 2006, 119 Stat. 3507, substituted “Authorized cost and scope of work variations” for “Authorized cost variations” in item 2853.

Pub. L. 108-375, div. B, title XXVIII, § 2804(a)(2), Oct. 28, 2004, 118 Stat. 2122, added item 2859.

2003—Pub. L. 108-136, div. A, title X, § 1044(b)(2), div. B, title XXVIII, § 2805(a)(2), Nov. 24, 2003, 117 Stat. 1612, 1721, struck out item 2859 “Transmission of annual military construction authorization request” and added item 2869.

2001—Pub. L. 107-107, div. B, title XXVIII, § 2803(b), Dec. 28, 2001, 115 Stat. 1305, struck out item 2861 “Annual report to Congress”.

1997—Pub. L. 105-85, div. A, title III, § 371(c)(3), Nov. 18, 1997, 111 Stat. 1705, added items 2867 and 2868.

1996—Pub. L. 104-106, div. B, title XXVIII, § 2818(a)(2), Feb. 10, 1996, 110 Stat. 555, added item 2854a.

1993—Pub. L. 103-160, div. B, title XXVIII, § 2803(b), Nov. 30, 1993, 107 Stat. 1885, added item 2866.

1990—Pub. L. 101-510, div. B, title XXVIII, § 2851(b), Nov. 5, 1990, 104 Stat. 1804, added item 2865.

1989—Pub. L. 101-189, div. B, title XXVIII, § 2807(b), Nov. 29, 1989, 103 Stat. 1648, added item 2864.

1987—Pub. L. 100-180, div. B, subdiv. 3, title I, § 2303(b), Dec. 4, 1987, 101 Stat. 1215, added item 2863.

1986—Pub. L. 99-661, div. A, title XIII, § 1343(a)(21)(B), Nov. 14, 1986, 100 Stat. 3994, struck out “for five years” after “Availability of appropriations” in item 2860.

1985—Pub. L. 99-167, title VIII, § 807(b), Dec. 3, 1985, 99 Stat. 988, added item 2862.

1982—Pub. L. 97-321, title VIII, § 801(b)(3), Oct. 15, 1982, 96 Stat. 1571, substituted “renewable forms of energy in new facilities” for “solar energy systems” in item 2857.

### § 2851. Supervision of military construction projects

(a) SUPERVISION OF MILITARY DEPARTMENT PROJECTS.—Each contract entered into by the United States in connection with a military construction project or a military family housing project shall be carried out under the direction and supervision of the Secretary of the Army (acting through the Chief of Engineers), the Secretary of the Navy (acting through the Commander of the Naval Facilities Engineering Command), or such other department or Government agency as the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective completion of the project.

(b) SUPERVISION OF DEFENSE AGENCY PROJECTS.—A military construction project for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense shall be accomplished by or through a military department designated by the Secretary of Defense.

(c) MAINTENANCE OF MILITARY CONSTRUCTION INFORMATION ON INTERNET; ACCESS.—(1) The Secretary of Defense shall maintain an Internet site that will permit a person to access and view on a separate page of the Internet site a document or other file containing the information required by paragraph (2) for the following:

(A) Each military construction project or military family housing project that has been specifically authorized by Act of Congress.

(B) Each project carried out with funds authorized for the operation and maintenance of military family housing.

(C) Each project carried out with funds authorized for the improvement of military family housing units.

(D) Each unspecified minor construction project carried out under the authority of section 2805(a) of this title.

(E) Each military construction project or military family housing project regarding which a statutory requirement exists to notify Congress.

(2) The information to be provided via the Internet site required by paragraph (1) for each project described in such paragraph shall include the following:

(A) The solicitation date and award date (or anticipated dates) for each contract entered into (or to be entered into) by the United States in connection with the project.

(B) The contract recipient, contract award amount, construction milestone schedule proposed by the contractor, and construction completion date stipulated in the awarded contract.

(C) The most current Department of Defense Form 1391, Military Construction Project Data, for the project.

(D) The progress of the project, including the percentage of construction currently completed and the current estimated construction completion date.

(E) The current contract obligation of funds for the project, including any changes to the original contract award amount.

(F) If funds appropriated for the project have been diverted for use in another project, the project to which the funds were diverted and the amount so diverted.

(G) For accounts such as planning and design, unspecified minor construction, and family housing operation and maintenance, detailed information regarding expenditures and anticipated expenditures under these accounts and the purposes for which the expenditures are made.

(3) The information required to be provided for each project described in paragraph (1) shall be made available on the Internet site required by such paragraph not later than 90 days after the award of a contract or delivery order for the project. The Secretary of Defense shall update the required information as promptly as practicable, but not less frequently than once a month, to ensure that the information is available in a timely manner.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 163; amended Pub. L. 109-163, div. B, title XXVIII, §2803(a), (c), Jan. 6, 2006, 119 Stat. 3505, 3506; Pub. L. 111-383, div. B, title XXVIII, §2801, Jan. 7, 2011, 124 Stat. 4458.)

#### AMENDMENTS

2011—Subsec. (c)(1). Pub. L. 111-383, §2801(c)(1), substituted “that will permit a person” for “that, when activated by a person authorized under paragraph (3), will permit the person”.

Subsec. (c)(2)(F) to (H). Pub. L. 111-383, §2801(a), redesignated subpars. (G) and (H) as (F) and (G), respec-

tively, and struck out former subpar. (F) which read as follows: “The estimated final cost of the project and, if the estimated final cost of the project exceeds the amount appropriated for the project and funds have been provided from another source to meet the increased cost, the source of the funds and the amount provided.”

Subsec. (c)(3), (4). Pub. L. 111-383, §2801(b), (c)(2), redesignated par. (4) as (3), substituted “on the Internet site required by such paragraph” for “to the persons referred to in paragraph (3)” and struck out “to such persons” before “in a timely manner”, and struck out former par. (3) which read as follows: “Access to the Internet site required by paragraph (1) shall be restricted to the following persons:

“(A) Members of the congressional defense committees and their staff.

“(B) Staff of the congressional defense committees.”

2006—Subsecs. (a), (b). Pub. L. 109-163, §2803(c), inserted headings.

Subsec. (c). Pub. L. 109-163, §2803(a), added subsec. (c).

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

#### IMPLEMENTATION OF INTERNET SITE

Pub. L. 109-163, div. B, title XXVIII, §2803(b), Jan. 6, 2006, 119 Stat. 3506, provided that: “The Internet site required by subsection (c) of section 2851 of title 10, United States Code, as added by subsection (a), shall be available to the persons referred to in paragraph (3) of such subsection not later than July 15, 2006.”

#### IDENTIFICATION OF REQUIREMENTS TO REDUCE BACKLOG IN MAINTENANCE AND REPAIR OF DEFENSE FACILITIES

Pub. L. 106-398, §1 [[div. A], title III, §374], Oct. 30, 2000, 114 Stat. 1654, 1654A-81, provided that:

“(a) REPORT TO ADDRESS MAINTENANCE AND REPAIR BACKLOG.—Not later than March 15, 2001, the Secretary of Defense shall submit to Congress a report identifying a list of requirements to reduce the backlog in maintenance and repair needs of facilities and infrastructure under the jurisdiction of the Department of Defense or a military department.

“(b) ELEMENTS OF REPORT.—At a minimum, the report shall include or address the following:

“(1) The extent of the work necessary to repair and revitalize facilities and infrastructure, or to demolish and replace unusable facilities, carried as backlog by the Secretary of Defense or the Secretary of a military department.

“(2) Measurable goals, over specified time frames, for addressing all of the identified requirements.

“(3) Expected funding for each military department and Defense Agency to address the identified requirements during the period covered by the most recent future-years defense program submitted to Congress pursuant to section 221 of title 10, United States Code.

“(4) The cost of the current backlog in maintenance and repair for each military department and Defense Agency, which shall be determined using the standard costs to standard facility categories in the Department of Defense Facilities Cost Factors Handbook, shown both in the aggregate and individually for each major military installation.

“(5) The total number of square feet of building space of each military department and Defense Agency to be demolished or proposed for demolition, shown both in the aggregate and individually for each major military installation.

“(6) The initiatives underway to identify facility and infrastructure requirements at military installations to accommodate new and developing weapons systems and to prepare installations to accommodate these systems.



“(c) ANNUAL UPDATES.—The Secretary of Defense shall update the report required under subsection (a) annually. The annual updates shall be submitted to Congress at or about the time that the budget is submitted to Congress for a fiscal year under section 1105(a) of title 31, United States Code.”

**§ 2852. Military construction projects: waiver of certain restrictions**

(a) The Secretary of Defense and the Secretaries of the military departments may carry out authorized military construction projects and authorized military family housing projects without regard to subsections (a) and (b) of section 3324 of title 31.

(b) Authority to carry out a military construction project or a military family housing project may be exercised on land not owned by the United States—

(1) before title to the land on which the project is to be carried out is approved under section 3111 of title 40; and

(2) even though the land will be held in other than a fee simple interest in a case in which the Secretary of the military department concerned determines that the interest to be acquired in the land is sufficient for the purposes of the project.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 97-295, §1(35), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97-321, title VIII, §805(a)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99-145, title XIII, §1303(a)(19), Nov. 8, 1985, 99 Stat. 739; Pub. L. 107-217, §3(b)(20), Aug. 21, 2002, 116 Stat. 1297.)

**HISTORICAL AND REVISION NOTES**

In 10:2852(a), the title 31 citation is substituted on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

**AMENDMENTS**

2002—Subsec. (b)(1). Pub. L. 107-217 substituted “section 3111 of title 40” for “section 355 of the Revised Statutes (40 U.S.C. 255)”.

1985—Subsec. (a). Pub. L. 99-145 substituted “subsections (a) and (b) of section 3324” for “section 3324(a) and (b)”.

1982—Subsec. (a). Pub. L. 97-295 substituted “section 3324(a) and (b) of title 31” for “section 3648 of the Revised Statutes (31 U.S.C. 529)”.

Subsec. (b). Pub. L. 97-321 substituted “may be exercised on land not owned by the United States” for “on land not owned by the United States may be exercised” in introductory text, redesignated former cl. (1) as par. (1), added par. (2), and struck out former cl. (2) which read as follows: “even though the land is held temporarily”.

**EFFECTIVE DATE**

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

**§ 2853. Authorized cost and scope of work variations**

(a) Except as provided in subsection (c) or (d), the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the amount appropriated for such project or 200 percent of the

minor construction project ceiling specified in section 2805(a)(1), whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was approved originally by Congress.

(b)(1) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(2) The scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may not be increased above the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(c) The limitation on cost variations in subsection (a) or the limitation on scope reduction in subsection (b)(1) does not apply if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—

(1) in the case of a cost increase or a reduction in the scope of work—

(A) the Secretary concerned notifies the appropriate committees of Congress in writing of the cost increase or reduction in scope and the reasons therefor, including a description of the funds proposed to be used to finance any increased costs; and

(B) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title; or

(2) in the case of a cost decrease, the Secretary concerned notifies the appropriate committees of Congress in writing not later than 14 days after the date funds are obligated in connection with the military construction project or military family housing project.

(d) The limitation on cost variations in subsection (a) does not apply to the following:

(1) The settlement of a contractor claim under a contract.

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any other legally required environmental hazard remediation, if the required remediation could not have reasonably been anticipated at the time the project was approved originally by Congress.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 98-407, title VIII,

§ 807, Aug. 28, 1984, 98 Stat. 1521; Pub. L. 100-26, § 7(f)(2), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100-180, div. B, subdiv. 3, title I, §§ 2312, 2313, Dec. 4, 1987, 101 Stat. 1217, 1218; Pub. L. 101-189, div. B, title XXVIII, § 2808, Nov. 29, 1989, 103 Stat. 1648; Pub. L. 104-106, div. B, title XXVIII, § 2817, Feb. 10, 1996, 110 Stat. 553; Pub. L. 107-107, div. B, title XXVIII, § 2802, Dec. 28, 2001, 115 Stat. 1305; Pub. L. 108-375, div. B, title XXVIII, § 2803, Oct. 28, 2004, 118 Stat. 2121; Pub. L. 109-163, div. B, title XXVIII, § 2804(a)-(c)(1), Jan. 6, 2006, 119 Stat. 3506; Pub. L. 109-364, div. B, title XXVIII, § 2806, Oct. 17, 2006, 120 Stat. 2468; Pub. L. 111-84, div. B, title XXVIII, § 2803, Oct. 28, 2009, 123 Stat. 2661.)

#### AMENDMENTS

2009—Subsec. (b). Pub. L. 111-84, § 2803(1), designated existing provisions as par. (1), substituted “may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.” for “may be reduced by not more than 25 percent from the amount approved for that project, construction, improvement, or acquisition by Congress.”, and added par. (2).

Subsec. (c). Pub. L. 111-84, § 2803(2), substituted “subsection (b)(1)” for “subsection (b)” in introductory provisions.

2006—Pub. L. 109-163, § 2804(c)(1), substituted “Authorized cost and scope of work variations” for “Authorized cost variations” in section catchline.

Subsec. (a). Pub. L. 109-163, § 2804(a)(1), substituted “may be increased or decreased by not more than 25 percent” for “may be increased by not more than 25 percent” and “if the Secretary concerned determines that such revised cost is required” for “if the Secretary concerned determines that such an increase in cost is required”.

Subsec. (c). Pub. L. 109-364 substituted “if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—” for “if—” in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) to (3) which read as follows:

“(1) the variation in cost or reduction in scope is approved by the Secretary concerned;

“(2) the Secretary concerned notifies the appropriate committees of Congress in writing of the variation or reduction and the reasons therefor, including a description of the funds proposed to be used to finance any increased costs; and

“(3) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.”

Pub. L. 109-163, § 2804(a)(2), (b), substituted “limitation on cost variations” for “limitation on cost increase” in introductory provisions, “the variation” for “the increase” in pars. (1) and (2), and inserted “, including a description of the funds proposed to be used to finance any increased costs” after “the reasons therefor” in par. (2).

Subsec. (d). Pub. L. 109-163, § 2804(a)(3), substituted “limitation on cost variations” for “limitation on cost increases” in introductory provisions.

2004—Subsec. (c)(3). Pub. L. 108-375 inserted before period at end “or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

2001—Subsec. (d). Pub. L. 107-107 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The limitation on cost increases in subsection (a) does not apply to the settlement of a contractor claim under a contract.”

1996—Subsec. (d). Pub. L. 104-106 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The limitation on cost increases in subsection (a) does not apply to a within-scope modification to a contract or to the settlement of a contractor claim under a contract if the increase in cost is approved by the Secretary concerned, and the Secretary concerned promptly submits written notification of the facts relating to the proposed increase in cost to the appropriate committees of Congress.”

1989—Pub. L. 101-189 amended section generally, substituting subssecs. (a) to (d) for former subssecs. (a) to (f).

1987—Subsec. (a)(1). Pub. L. 100-180, § 2312, substituted “Except as provided in paragraph (2), the total cost authorized for military construction projects at an installation (including each project the cost of which is included in such total authorized cost and is less than the minor project ceiling) may be increased by not more than 25 percent of the total amount appropriated for such projects” for “Except as provided in paragraph (2), the cost authorized for a military construction project (other than a project for which the approved amount is less than the minor project ceiling (as defined in subsection (f))) may be increased by not more than 25 percent of the amount appropriated for the project”.

Pub. L. 100-26, § 7(f)(2)(A), substituted “the minor project ceiling (as defined in subsection (f))” for “the amount specified by law as the maximum amount for a minor military construction project”.

Pub. L. 100-26, § 7(f)(2)(B), substituted “the minor project ceiling” for “the amount specified by law as the maximum amount for a minor military construction project”.

Subsec. (a)(2). Pub. L. 100-26, § 7(f)(2)(B), substituted “the minor project ceiling” for “the amount specified by law as the maximum amount for a minor military construction project” in two places.

Subsec. (b). Pub. L. 100-26, § 7(f)(2)(B), (C), substituted “the minor project ceiling” for “the amount specified by law as the maximum amount for a minor military construction project” and “the amount of such ceiling” for “such maximum amount” in two places.

Subsec. (c). Pub. L. 100-180, § 2313, substituted “construction, improvement,” for “construction”.

Subsec. (e). Pub. L. 100-26, § 7(f)(2)(B), substituted “the minor project ceiling” for “the amount specified by law as the maximum amount for a minor military construction project”.

Subsec. (f). Pub. L. 100-26, § 7(f)(2)(D), added subsec. (f).

1984—Subsec. (e). Pub. L. 98-407 inserted “is more than the amount specified by law as the maximum amount for a minor military construction project and”.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

#### § 2854. Restoration or replacement of damaged or destroyed facilities

(a) Subject to subsection (b), the Secretary concerned may repair, restore, or replace a facility under his jurisdiction, including a family housing facility, that has been damaged or destroyed.

(b) When a decision is made to carry out construction under this section and the cost of the repair, restoration, or replacement is greater than the maximum amount for a minor construction project, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under this section. The project may

then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 165; amended Pub. L. 102-190, div. B, title XXVIII, §2870(7), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 108-136, div. A, title X, §1031(a)(45), Nov. 24, 2003, 117 Stat. 1602.)

#### AMENDMENTS

2003—Subsec. (b). Pub. L. 108-136 inserted before period at end “or, if earlier, the end of the seven-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

1991—Subsec. (b). Pub. L. 102-190 struck out “(1)” after “carried out only” and “, or (2) after each such committee has approved the project, if the committees approve the project before the end of that period” before period at end.

#### EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

### § 2854a. Conveyance of damaged or deteriorated military family housing; use of proceeds

(a) **AUTHORITY TO CONVEY.**—(1) The Secretary concerned may convey any family housing facility that, due to damage or deterioration, is in a condition that is uneconomical to repair. Any conveyance of a family housing facility under this section may include a conveyance of the real property associated with the facility conveyed.

(2) The authority of this section does not apply to family housing facilities located at military installations approved for closure under a base closure law or family housing facilities located at an installation outside the United States at which the Secretary of Defense terminates operations.

(3) The aggregate total value of the family housing facilities conveyed by the Department of Defense under the authority in this subsection in any fiscal year may not exceed \$5,000,000.

(4) For purposes of this subsection, a family housing facility is in a condition that is uneconomical to repair if the cost of the necessary repairs for the facility would exceed the amount equal to 70 percent of the cost of constructing a family housing facility to replace such facility.

(b) **CONSIDERATION.**—(1) As consideration for the conveyance of a family housing facility under subsection (a), the person to whom the facility is conveyed shall pay the United States an amount equal to the fair market value of the facility conveyed, including any real property conveyed along with the facility.

(2) The Secretary concerned shall determine the fair market value of any family housing facility and associated real property that is conveyed under subsection (a). Such determination shall be final.

(c) **NOTICE AND WAIT REQUIREMENTS.**—The Secretary concerned may not enter into an agree-

ment to convey a family housing facility under this section until—

(1) the Secretary submits to the appropriate committees of Congress, in writing, a justification for the conveyance under the agreement, including—

(A) an estimate of the consideration to be provided the United States under the agreement;

(B) an estimate of the cost of repairing the family housing facility to be conveyed; and

(C) an estimate of the cost of replacing the family housing facility to be conveyed; and

(2) a period of 21 days has elapsed after the date on which the justification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the justification is provided in an electronic medium pursuant to section 480 of this title.

(d) **INAPPLICABILITY OF CERTAIN PROPERTY DISPOSAL LAWS.**—The following provisions of law do not apply to the conveyance of a family housing facility under this section:

(1) Subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(2) Title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411 et seq.).

(e) **USE OF PROCEEDS.**—(1) The proceeds of any conveyance of a family housing facility under this section shall be credited to the appropriate fund established under section 2883 of this title and shall be available—

(A) to construct family housing units to replace the family housing facility conveyed under this section, but only to the extent that the number of units constructed with such proceeds does not exceed the number of units of military family housing of the facility conveyed;

(B) to repair or restore existing military family housing; and

(C) to reimburse the Secretary concerned for the costs incurred by the Secretary in conveying the family housing facility.

(2) Notwithstanding section 2883(d) of this title, proceeds derived from a conveyance of a family housing facility under this section shall be available under paragraph (1) without any further appropriation.

(f) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of any family housing facility conveyed under this section, including any real property associated with such facility, shall be determined by such means as the Secretary concerned considers satisfactory, including by survey in the case of real property.

(g) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary concerned may require such additional terms and conditions in connection with the conveyance of family housing facilities under this section as the Secretary considers appropriate to protect the interests of the United States.

(Added Pub. L. 104-106, div. B, title XXVIII, §2818(a)(1), Feb. 10, 1996, 110 Stat. 553; amended Pub. L. 107-107, div. A, title X, §1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107-217, §3(b)(21),

Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108-136, div. A, title X, §1031(a)(46), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 111-350, §5(b)(49), Jan. 4, 2011, 124 Stat. 3846.)

## REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (d)(2), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482. Title V of the Act is classified generally to subchapter V (§11411 et seq.) of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

## AMENDMENTS

2011—Subsec. (d)(1). Pub. L. 111-350 substituted “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” for “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”.

2003—Subsec. (c)(2). Pub. L. 108-136 struck out “calendar” after “21” and inserted before period at end “or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the justification is provided in an electronic medium pursuant to section 480 of this title”.

2002—Subsec. (d)(1). Pub. L. 107-217 substituted “Subtitle I of title 40 and title III of the” for “The” and “(41 U.S.C. 251 et seq.)” for “(40 U.S.C. 471 et seq.)”.

2001—Subsec. (d)(2). Pub. L. 107-107 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

**§ 2855. Law applicable to contracts for architectural and engineering services and construction design**

(a) Contracts for architectural and engineering services and construction design in connection with a military construction project or a military family housing project shall be awarded in accordance with chapter 11 of title 40.

(b)(1) In the case of a contract referred to in subsection (a)—

(A) if the Secretary concerned estimates that the initial award of the contract will be in an amount greater than or equal to the threshold amount determined under paragraph (2), the contract may not be set aside exclusively for award to small business concerns; and

(B) if the Secretary concerned estimates that the initial award of the contract will be in an amount less than the threshold amount determined under paragraph (2), the contract shall be awarded in accordance with the set aside provisions of the Small Business Act (15 U.S.C. 631 et seq.).

(2) The initial threshold amount under paragraph (1) is \$300,000. The Secretary of Defense may revise that amount in order to ensure that small business concerns receive a reasonable share of contracts referred to in subsection (a).

(3) This subsection does not restrict the award of contracts to small business concerns under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 98-407, title VIII, §808(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 107-217, §3(b)(22), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 108-136, div. A, title XIV, §1427(a), Nov. 24, 2003, 117 Stat. 1670.)

## REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (b)(1)(B), is Pub. L. 85-536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

## AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108-136 substituted “\$300,000” for “\$85,000”.

2002—Subsec. (a). Pub. L. 107-217 substituted “chapter 11 of title 40” for “title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)”.

1984—Pub. L. 98-407 designated existing provisions as subsec. (a) and added subsec. (b).

## EFFECTIVE DATE OF 1984 AMENDMENT

Section 808(b) of Pub. L. 98-407 provided that: “Subsection (b) of section 2855 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts awarded after September 30, 1984, except that the authority of the Secretary of Defense under paragraph (2) of that subsection shall apply only with respect to contracts awarded after September 30, 1985.”

## EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

**§ 2856. Military unaccompanied housing: local comparability of floor areas**

In the construction, acquisition, and improvement of military unaccompanied housing, the Secretary concerned shall ensure that the floor areas of such housing in a particular locality (as designated by the Secretary concerned for purposes of this section) do not exceed the floor areas of similar housing in the private sector in that locality.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 101-510, div. A, title XIII, §1301(19), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 109-364, div. B, title XXVIII, §2807(a)(1), Oct. 17, 2006, 120 Stat. 2468.)

## AMENDMENTS

2006—Pub. L. 109-364 amended section catchline and text generally. Prior to amendment, text read as follows: “The Secretary of Defense shall prescribe regulations establishing the maximum allowable net square feet per occupant for new permanent barracks construction. Such regulations shall be uniform for the armed forces under the jurisdiction of the Secretary of a military department.”

1990—Pub. L. 101-510 struck out “(a)” before “The Secretary of Defense” and struck out subsec. (b) which read as follows: “Before taking effect, any regulations under this section, and any modifications to such regulations, shall be submitted to the appropriate committees of Congress. Such regulations (including any modifications to such regulations) may not then take effect until 21 days after being received by such committees.”

## EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

**[§ 2857. Renumbered § 2915]****§ 2858. Limitation on the use of funds for expediting a construction project**

Funds appropriated for military construction (including military family housing) may not be expended for additional costs involved in expediting a construction project unless the Secretary concerned (1) certifies that expenditures for such costs are necessary to protect the national interest, and (2) establishes a reasonable completion date for the project. In establishing such a completion date, the Secretary shall take into consideration the urgency of the requirement for completion of the project, the type and location of the project, the climatic and seasonal conditions affecting the construction involved, and the application of economical construction practices.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 167.)

**EFFECTIVE DATE**

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

**§ 2859. Construction requirements related to antiterrorism and force protection or urban-training operations**

(a) **ANTITERRORISM AND FORCE PROTECTION GUIDANCE AND CRITERIA.**—The Secretary of Defense shall develop common guidance and criteria to be used by each Secretary concerned—

(1) to assess the vulnerability of military installations located inside and outside of the United States to terrorist attack;

(2) to develop construction standards designed to reduce the vulnerability of structures to terrorist attack and improve the security of the occupants of such structures;

(3) to prepare and carry out military construction projects, such as gate and fenceline construction, to improve the physical security of military installations; and

(4) to assist in prioritizing such projects within the military construction budget of each of the armed forces.

(b) **VULNERABILITY ASSESSMENTS.**—The Secretary of Defense shall require vulnerability assessments of military installations to be conducted, at regular intervals, using the criteria developed under subsection (a).

(c) **MILITARY CONSTRUCTION REQUIREMENTS.**—As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, but in no case later than March 15 of each year, the Secretary of Defense shall submit a report, in both classified and unclassified form, describing—

(1) the location and results of the vulnerability assessments conducted under subsection (b) during the most recently completed fiscal year;

(2) the military construction requirements anticipated to be necessary during the period covered by the then-current future-years defense plan under section 221 of this title to improve the physical security of military installations; and

(3) the extent to which funds to meet those requirements are not requested in the Department of Defense budget for the fiscal year for which the budget is submitted.

(d) **CERTIFICATION REQUIRED FOR MILITARY CONSTRUCTION PROJECTS DESIGNED TO PROVIDE TRAINING IN URBAN OPERATIONS.**—(1) Except as provided in paragraph (3), the Secretary concerned may not carry out a military construction project to construct a facility designed to provide training in urban operations for members of the armed forces or personnel of the Department of Defense or other Federal agencies until—

(A) the Secretary of Defense approves a strategy for training and facility construction for operations in urban terrain; and

(B) the Under Secretary of Defense for Personnel and Readiness evaluates the project and certifies to the appropriate committees of Congress that the project—

(i) is consistent with the strategy; and

(ii) incorporates the appropriate capabilities for joint and interagency use in accordance with the strategy.

(2) The Under Secretary of Defense for Personnel and Readiness shall conduct the evaluation required by paragraph (1)(B) in consultation with the Commander of the United States Joint Forces Command.

(3) This subsection shall not apply with respect to a military construction project carried out under the authority of section 2803, 2804, or 2808 of this title or section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723).

(Added Pub. L. 108-375, div. B, title XXVIII, §2804(a)(1), Oct. 28, 2004, 118 Stat. 2121; amended Pub. L. 109-364, div. B, title XXVIII, §2808(a), (b)(1), Oct. 17, 2006, 120 Stat. 2469.)

**REFERENCES IN TEXT**

Section 2808 of the Military Construction Authorization Act for Fiscal Year 2004, referred to in subsec. (d)(3), is section 2808 of title XXVIII of div. B of Pub. L. 108-136, Nov. 24, 2003, 117 Stat. 1723, which is not classified to the Code except for section 2808(e), which is set out as a note under section 2805 of this title.

**PRIOR PROVISIONS**

A prior section 2859, added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 97-295, §1(36), Oct. 12, 1982, 96 Stat. 1296, provided for transmission of annual military construction authorization request, prior to repeal by Pub. L. 108-136, div. A, title X, §1044(b)(1), Nov. 24, 2003, 117 Stat. 1612.

**AMENDMENTS**

2006—Pub. L. 109-364, §2808(b)(1), inserted “or urban-training operations” after “force protection” in section catchline.

Subsec. (d). Pub. L. 109-364, §2808(a), added subsec. (d).

**EFFECTIVE DATE OF 2006 AMENDMENT**

Pub. L. 109-364, div. B, title XXVIII, §2808(c), Oct. 17, 2006, 120 Stat. 2470, provided that: “Subsection (d) of section 2859 of title 10, United States Code, as added by subsection (a), shall apply with respect to military construction projects described in such subsection (d) for which funds are first provided for fiscal year 2007 or thereafter.”

## SPECIAL REQUIREMENT FOR 2006 REPORT

Pub. L. 108-375, div. B, title XXVIII, §2804(b), Oct. 28, 2004, 118 Stat. 2122, provided that: “In the case of the report required to be submitted in 2006 under section 2859(c) of title 10, United States Code, as added by subsection (a), the Secretary of Defense shall include a certification by the Secretary that since September 11, 2001, assessments regarding the vulnerability of military installations to terrorist attack have been undertaken for all major military installations. The Secretary shall indicate the basis by which the Secretary differentiated between major and nonmajor military installations for purposes of making the certification.”

**§ 2860. Availability of appropriations**

Funds appropriated to a military department or to the Secretary of Defense for a fiscal year for military construction or military family housing purposes may remain available for obligation beyond such fiscal year to the extent provided in appropriation Acts.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 99-167, title VIII, §812(a), Dec. 3, 1985, 99 Stat. 991; Pub. L. 99-173, §121(b), Dec. 10, 1985, 99 Stat. 1029; Pub. L. 99-661, div. A, title XIII, §1343(a)(21)(A), Nov. 14, 1986, 100 Stat. 3994.)

## AMENDMENTS

1986—Pub. L. 99-661 substituted “to the Secretary of Defense” for “defense agency”, inserted “for obligation” after “remains available”, and struck out “the” before “appropriation Acts”.

1985—Pub. L. 99-173 substituted “Availability of appropriations” for “Availability of appropriations for five years” as section catchline, and amended text generally. Prior to amendment, text read as follows: “Subject to the provisions of appropriation Acts, any funds appropriated to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were appropriated if the funds obligated for such project (1) are obligated from funds available for military construction projects, and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.”

Pub. L. 99-167 struck out subsection designation “(a)” and “and except as otherwise provided under subsection (b)” after “provisions of appropriation Acts”, and struck out subsec. (b) which provided: “Should a requirement develop to obligate funds for a military construction project after the end of the fourth fiscal year after the fiscal year for which such funds were appropriated, such obligation may be made after the end of the 21-day period beginning on the date on which the appropriate committees of Congress receive notification of the need for such obligation and the reasons therefor.”

## EFFECTIVE DATE OF 1985 AMENDMENTS

Section 121(c) of Pub. L. 99-173 provided that: “The amendment made by subsection (b) [amending this section] shall apply to funds appropriated after the date of the enactment of Public Law 99-103 [Sept. 30, 1985].”

Section 812(b) of Pub. L. 99-167 provided that: “The amendments made by subsection (a) [amending this section] shall apply to funds appropriated after September 30, 1985.”

## EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

## AVAILABILITY OF APPROPRIATIONS FOR FIVE YEARS

Pub. L. 109-114, title I, §117, Nov. 30, 2005, 119 Stat. 2378, which provided that any funds made available to a military department or defense agency for the construction of military projects could be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were made available, if the funds obligated for such project: (1) were obligated from funds available for military construction projects; and (2) did not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law, was from the Military Construction, Military Quality of Life and Veterans Affairs Appropriations Act, 2006 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 108-324, div. A, §117, Oct. 13, 2004, 118 Stat. 1227.

Pub. L. 108-132, §117, Nov. 22, 2003, 117 Stat. 1380.

Pub. L. 107-249, §117, Oct. 23, 2002, 116 Stat. 1583.

Pub. L. 107-64, §117, Nov. 5, 2001, 115 Stat. 479.

Pub. L. 106-246, div. A, §117, July 13, 2000, 114 Stat. 516.

Pub. L. 106-52, §117, Aug. 17, 1999, 113 Stat. 264.

Pub. L. 105-237, §117, Sept. 20, 1998, 112 Stat. 1558.

Pub. L. 105-45, §117, Sept. 30, 1997, 111 Stat. 1147.

Pub. L. 104-196, §117, Sept. 16, 1996, 110 Stat. 2391.

Pub. L. 104-32, §117, Oct. 3, 1995, 109 Stat. 289.

Pub. L. 103-307, §118, Aug. 23, 1994, 108 Stat. 1664.

Pub. L. 103-110, §118, Oct. 21, 1993, 107 Stat. 1043.

Pub. L. 102-380, §119, Oct. 5, 1992, 106 Stat. 1371.

Pub. L. 102-136, §119, Oct. 25, 1991, 105 Stat. 643.

Pub. L. 101-519, §119, Nov. 5, 1990, 104 Stat. 2246.

Pub. L. 101-148, §121, Nov. 10, 1989, 103 Stat. 925.

Pub. L. 100-447, §124, Sept. 27, 1988, 102 Stat. 1835.

TRANSFER OF FUNDS FOR FOREIGN CURRENCY  
FLUCTUATIONS

Pub. L. 108-132, §118, Nov. 22, 2003, 117 Stat. 1380, which provided that during the 5-year period after appropriations available to the Department of Defense for military construction and family housing operation and maintenance and construction have expired for obligation, upon a determination that such appropriations would not be necessary for the liquidation of obligations or for making authorized adjustments to such appropriations for obligations incurred during the period of availability of such appropriations, unobligated balances of such appropriations could be transferred into the appropriation “Foreign Currency Fluctuations, Construction, Defense” to be merged with and to be available for the same time period and for the same purposes as the appropriation to which transferred, was from the Military Construction Appropriations Act, 2005 and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were also contained in the following prior appropriations acts:

Pub. L. 107-249, §118, Oct. 23, 2002, 116 Stat. 1584.

Pub. L. 107-64, §118, Nov. 5, 2001, 115 Stat. 480.

Pub. L. 106-246, div. A, §118, July 13, 2000, 114 Stat. 516.

Pub. L. 106-52, §118, Aug. 17, 1999, 113 Stat. 264.

Pub. L. 105-237, §118, Sept. 20, 1998, 112 Stat. 1559.

Pub. L. 105-45, §118, Sept. 30, 1997, 111 Stat. 1147.

Pub. L. 104-196, §118, Sept. 16, 1996, 110 Stat. 2392.

Pub. L. 104-32, §118, Oct. 3, 1995, 109 Stat. 289.

Pub. L. 103-307, §119, Aug. 23, 1994, 108 Stat. 1665.

Pub. L. 103-110, §120, Oct. 21, 1993, 107 Stat. 1043.

Pub. L. 102-380, §121, Oct. 5, 1992, 106 Stat. 1372.

Pub. L. 102-136, §122, Oct. 25, 1991, 105 Stat. 643.

Pub. L. 99-500, §101(k) [title I, §121], Oct. 18, 1986, 100 Stat. 1783-287, 1783-293, and Pub. L. 99-591, §101(k) [title I, §121], Oct. 30, 1986, 100 Stat. 3341-287, 3341-293, as amended by Pub. L. 102-136, §122, Oct. 25, 1991, 105 Stat.

643, provided that: “For Transfer by the Secretary of Defense to and from appropriations and funds not merged pursuant to subsection 1552(a)(1) of title 31 of the United States Code and available for obligation or expenditure during fiscal year 1987 or thereafter, for military construction or expenses of family housing for the military departments and Defense agencies, in order to maintain the budgeted level of operations for such appropriations and thereby eliminate substantial gains and losses to such appropriations caused by fluctuations in foreign currency exchange rates that vary substantially from those used in preparing budget submissions, an appropriation, to remain available until expended: *Provided*, That funds transferred from this appropriation shall be merged with and be available for the same purpose, and for the same time period, as the appropriation or fund to which transferred, and funds transferred to this appropriation shall be merged with, and available for the purpose of this appropriation until expended: *Provided further*, That transfers may be made from time to time from this appropriation to the extent the Secretary of Defense determines it may be necessary to do so to reflect downward fluctuations in the currency exchange rates from those used in preparing the budget submissions for such appropriations, but transfers shall be made from such appropriations to this appropriation to reflect upward fluctuations in currency exchange rates to prevent substantial net gains in such appropriations: *Provided further*, That authorizations or limitations now or hereafter contained within appropriations or other provisions of law limiting the amounts that may be obligated or expended for military construction and family housing expenses are hereby increased to the extent necessary to reflect downward fluctuations in foreign currency exchange rates from those used in preparing the applicable budget submission: *Provided further*, That for the purposes of the appropriation ‘Foreign Currency Fluctuations, Construction, Defense’ the foreign currency rates used in preparing budget submissions shall be the foreign currency exchange rates as adjusted or modified, as reflected in applicable Committee reports on the Acts making appropriations for military construction for the Department of Defense: *Provided further*, That the Secretary of Defense shall provide an annual report to the Congress on all transfers made to or made from this appropriation: *Provided further*, That contracts or other obligations entered into payable in foreign currencies may be recorded as obligations based on the currency exchange rates used in preparing budget submissions and adjustments to reflect fluctuations in such rates may be recorded as disbursements are made: *Provided further*, That, at the discretion of the Secretary of Defense, any savings generated in the military construction and family housing programs may be transferred to this appropriation.”

**§ 2861. Military construction projects in connection with industrial facility investment program**

(a) **AUTHORITY.**—The Secretary of Defense may carry out a military construction project, not previously authorized, for the purpose of carrying out activities under section 2474(a)(2) of this title, using funds appropriated or otherwise made available for that purpose in military construction accounts.

(b) **CREDITING OF FUNDS TO CAPITAL BUDGET.**—Funds appropriated or otherwise made available in a fiscal year for the purpose of carrying out a military construction project with respect to a covered depot (as defined in subsection (e) of section 2476 of this title) may be credited to the amount required by subsection (a) of such section to be invested in the capital budgets of the covered depots in that fiscal year.

(c) **NOTICE AND WAIT REQUIREMENT.**—When a decision is made to carry out a project under

subsection (a), the Secretary of Defense shall notify in writing the appropriate committees of Congress of that decision and the savings estimated to be realized from the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(d) **ANNUAL REPORT.**—Not later than December 31 of each year, the Secretary shall submit to Congress a report describing actions taken under this section and the savings realized from such actions during the fiscal year ending in the year in which the report is submitted.

(Added Pub. L. 109-364, div. B, title XXVIII, § 2809(a), Oct. 17, 2006, 120 Stat. 2470.)

**PRIOR PROVISIONS**

A prior section 2861, added Pub. L. 97-214, § 2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 100-26, § 7(f)(1), (j)(9), Apr. 21, 1987, 101 Stat. 281, 283; Pub. L. 104-106, div. B, title XXVIII, § 2811(b), Feb. 10, 1996, 110 Stat. 552; Pub. L. 104-201, div. B, title XXVIII, § 2802(d)(1), Sept. 23, 1996, 110 Stat. 2787, required the Secretary of Defense to submit an annual report to the appropriate committees of Congress with respect to military construction activities and military family housing activities, prior to repeal by Pub. L. 107-107, div. B, title XXVIII, § 2803(a), Dec. 28, 2001, 115 Stat. 1305.

**§ 2862. Turn-key selection procedures**

(a) **AUTHORITY TO USE.**—The Secretary concerned may use one-step turn-key selection procedures for the purpose of entering into contracts for the construction of authorized military construction projects.

(b) **DEFINITION.**—In this section, the term “one-step turn-key selection procedures” means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary concerned.

(Added Pub. L. 99-167, title VIII, § 807(a), Dec. 3, 1985, 99 Stat. 988; amended Pub. L. 100-26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100-180, div. B, subdiv. 3, title I, § 2301, Dec. 4, 1987, 101 Stat. 1214; Pub. L. 101-189, div. B, title XXVIII, § 2806, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102-190, div. B, title XXVIII, § 2802, Dec. 5, 1991, 105 Stat. 1537.)

**AMENDMENTS**

1991—Pub. L. 102-190 redesignated par. (1) of subsec. (a) as entire subsec. (a) and inserted heading, redesignated par. (2) of subsec. (a) as (b), inserted heading, and struck out former subsecs. (b) and (c) which read as follows:

“(b) The Secretary of Defense, with respect to any Defense Agency, or the Secretary of a military department may not, during any fiscal year, enter into more than three contracts for military construction projects using procedures authorized by this section.

“(c) The authority under this section shall expire on October 1, 1991.”

1989—Subsec. (a)(1). Pub. L. 101-189, § 2806(1), struck out at end “Such procedures may be used by the Secretary of a military department only with the approval of the Secretary of Defense.”

Subsec. (c). Pub. L. 101-189, § 2806(2), substituted “1991” for “1990”.

1987—Subsec. (a)(1). Pub. L. 100-180, § 2301(1), substituted “The Secretary concerned” for “The Secretaries of the military departments, with the approval of the Secretary of Defense,” and inserted provision at end that such procedures may be used by the Secretary of a military department only with the approval of the Secretary of Defense.

Subsec. (a)(2). Pub. L. 100-26 inserted “the term” after “In this section,”.

Subsec. (b). Pub. L. 100-180, § 2301(2), inserted “Secretary of Defense, with respect to any Defense Agency, or the” after “The”.

#### EFFECTIVE DATE

Section 807(c) of Pub. L. 99-167 provided that: “The amendments made by this section [enacting this section] shall take effect on October 1, 1986.”

### § 2863. Payment of contractor claims

Notwithstanding any other provision of law, the Secretary concerned may pay meritorious contractor claims that arise under military construction contracts or family housing contracts. The Secretary of Defense, with respect to a Defense Agency, or the Secretary of a military department may use for such purpose any unobligated funds appropriated to such department and available for military construction or family housing construction, as the case may be.

(Added Pub. L. 100-180, div. B, subdiv. 3, title I, § 2303(a), Dec. 4, 1987, 101 Stat. 1215.)

### [[§§ 2864, 2865. Repealed. Pub. L. 109-364, div. B, title XXVIII, §§ 2810(a), 2851(a)(2), Oct. 17, 2006, 120 Stat. 2470, 2494]

Section 2864, added Pub. L. 101-189, div. B, title XXVIII, § 2807(a), Nov. 29, 1989, 103 Stat. 1648; amended Pub. L. 104-106, div. A, title X, § 1062(g), Feb. 10, 1996, 110 Stat. 444, related to military construction contracts on Guam.

Section 2865, added Pub. L. 101-510, div. B, title XXVIII, § 2851(a), Nov. 5, 1990, 104 Stat. 1803; amended Pub. L. 102-484, div. B, title XXVIII, § 2801, Oct. 23, 1992, 106 Stat. 2604; Pub. L. 103-160, div. B, title XXVIII, § 2804, Nov. 30, 1993, 107 Stat. 1885; Pub. L. 103-337, div. A, title X, § 1070(a)(14), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104-106, div. A, title XV, § 1502(a)(27), div. B, title XXVIII, § 2819, Feb. 10, 1996, 110 Stat. 506, 555; Pub. L. 105-85, div. A, title III, § 371(d)(2), div. B, title XXVIII, § 2804(a), Nov. 18, 1997, 111 Stat. 1706, 1990; Pub. L. 107-314, div. B, title XXVIII, § 2805, Dec. 2, 2002, 116 Stat. 2705; Pub. L. 108-136, div. A, title X, § 1031(a)(47), div. B, title XXVIII, § 2812(a), Nov. 24, 2003, 117 Stat. 1602, 1725, related to energy savings at military installations. See sections 2911 to 2914 and 2925 of this title.

### § 2866. Water conservation at military installations

(a) WATER CONSERVATION ACTIVITIES.—(1) The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by a utility for the management of water demand or for water conservation.

(2) The Secretary of Defense may authorize a military installation to accept a financial incentive (including an agreement to reduce the amount of a future water bill), goods, or services generally available from a utility, for the purpose of adopting technologies and practices that—

(A) relate to the management of water demand or to water conservation; and

(B) as determined by the Secretary, are cost effective for the Federal Government.

(3) Subject to paragraph (4), the Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into an agreement with a utility to design and implement a cost-effective program that provides incentives for the management of water demand and for water conservation and that addresses the requirements and circumstances of the installation. Activities under the program may include the provision of water management services, the alteration of a facility, and the installation and maintenance by the utility of a water-saving device or technology.

(4)(A) If an agreement under paragraph (3) provides for a utility to pay in advance the financing costs for the design or implementation of a program referred to in that paragraph and for such advance payment to be repaid by the United States, the cost of such advance payment may be recovered by the utility under terms that are not less favorable than the terms applicable to the most favored customer of the utility.

(B) Subject to the availability of appropriations, a repayment of an advance payment under subparagraph (A) shall be made from funds available to a military department for the purchase of utility services.

(C) An agreement under paragraph (3) shall provide that title to a water-saving device or technology installed at a military installation pursuant to the agreement shall vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(b) USE OF FINANCIAL INCENTIVES AND WATER COST SAVINGS.—(1) Financial incentives received from utilities for management of water demand or water conservation under subsection (a)(2) shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.

(2) Water cost savings realized under subsection (a)(3) shall be used as follows:

(A) One-half of the amount shall be used for water conservation activities at such buildings, facilities, or installations of the Department of Defense as may be designated (in accordance with regulations prescribed by the Secretary of Defense) by the head of the department, agency, or instrumentality that realized the water cost savings.

(B) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for—

(i) improvements to existing military family housing units;

(ii) any unspecified minor construction project that will enhance the quality of life of personnel; or



(iii) any morale, welfare, or recreation facility or service.

(3) The Secretary of Defense shall include in the budget material submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31 a separate statement of the amounts available for obligation under this subsection in that fiscal year.

(c) WATER CONSERVATION CONSTRUCTION PROJECTS.—(1) The Secretary of Defense may carry out a military construction project for water conservation, not previously authorized, using funds appropriated or otherwise made available to the Secretary for water conservation.

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify the appropriate committees of Congress of that decision. Such project may be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 103–160, div. B, title XXVIII, §2803(a), Nov. 30, 1993, 107 Stat. 1884; amended Pub. L. 104–106, div. A, title XV, §1502(a)(27), Feb. 10, 1996, 110 Stat. 506; Pub. L. 105–85, div. B, title XXVIII, §2804(b), Nov. 18, 1997, 111 Stat. 1991; Pub. L. 108–136, div. A, title X, §1031(a)(48), Nov. 24, 2003, 117 Stat. 1602; Pub. L. 109–364, div. B, title XXVIII, §2851(d), Oct. 17, 2006, 120 Stat. 2495.)

#### AMENDMENTS

2006—Subsec. (b). Pub. L. 109–364 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(1) Financial incentives received under subsection (a)(2) shall be used as provided in section 2865(b)(3) of this title.

“(2) Water cost savings realized under subsection (a)(3) shall be used as provided in section 2865(b)(2) of this title.”

2003—Subsec. (c)(2). Pub. L. 108–136 inserted before period at end “or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

1997—Subsec. (b). Pub. L. 105–85 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(b) USE OF WATER COST SAVINGS.—Water cost savings realized under this section shall be used as provided in section 2865(b)(2) of this title.”

1996—Subsec. (c)(2). Pub. L. 104–106 substituted “appropriate committees of Congress” for “Committees on Armed Services and Appropriations of the Senate and House of Representatives”.

### § 2867. Energy monitoring and utility control system specification for military construction and military family housing activities

(a) ADOPTION OF DEPARTMENT-WIDE, OPEN PROTOCOL, ENERGY MONITORING AND UTILITY CONTROL SYSTEM SPECIFICATION.—(1) The Secretary of Defense shall adopt an open protocol energy monitoring and utility control system specification for use throughout the Department of De-

fense in connection with a military construction project, military family housing activity, or other activity under this chapter for the purpose of monitoring and controlling, with respect to the project or activity, the items specified in paragraph (2) with the goal of establishing installation-wide energy monitoring and utility control systems.

(2) The energy monitoring and utility control system specification required by paragraph (1) shall cover the following:

(A) Utilities and energy usage, including electricity, gas, steam, and water usage.

(B) Indoor environments, including temperature and humidity levels.

(C) Heating, ventilation, and cooling components.

(D) Central plant equipment.

(E) Renewable energy generation systems.

(F) Lighting systems.

(G) Power distribution networks.

(b) EXCLUSION.—(1) The energy monitoring and utility control system specification required by subsection (a) is not required to apply to projects carried out under the authority provided in subchapter IV of chapter 169 of this title.

(2) The Secretary concerned may waive the application of the energy monitoring and utility control system specification required by subsection (a) with respect to a specific military construction project, military family housing activity, or other activity under this chapter if the Secretary determines that the application of the specification to the project or activity is not life cycle cost-effective. The Secretary concerned shall notify the congressional defense committees of any waiver granted under this paragraph.

(Added Pub. L. 111–84, div. B, title XXVIII, §2841(a)(1), Oct. 28, 2009, 123 Stat. 2679.)

#### PRIOR PROVISIONS

A prior section 2867 was renumbered section 2916 of this title.

#### DEADLINE FOR ADOPTION

Pub. L. 111–84, div. B, title XXVIII, §2841(a)(3), Oct. 28, 2009, 123 Stat. 2680, provided that: “The Secretary of Defense shall adopt the open protocol energy monitoring and utility control system specification required by section 2867 of title 10, United States Code, as added by paragraph (1), not later than 180 days after the date of the enactment of this Act [Oct. 28, 2009].”

### § 2868. Utility services: furnishing for certain buildings

Appropriations for the Department of Defense may be used for utility services for buildings constructed at private cost, as authorized by law.

(Added Pub. L. 100–370, §1(j)(1), July 19, 1988, 102 Stat. 848, §2490; renumbered §2868, Pub. L. 105–85, div. A, title III, §371(b)(2), Nov. 18, 1997, 111 Stat. 1705; amended Pub. L. 108–375, div. A, title VI, §651(e)(2), Oct. 28, 2004, 118 Stat. 1972.)

#### HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, §101(b) [title VIII, §8006(b)], Dec. 19, 1985, 99 Stat. 1185.

In two instances, the source section for provisions to be codified provides that defense appropriations may be

used for “welfare and recreation” or “welfare and recreational” purposes. (Section 735 of Public Law 98-212 and section 8006(b) of Public Law 99-190, to be codified as 10 U.S.C. 2241(a)(1) and 2490(2), respectively). The committee added the term “morale” in both of these two instances to conform to the usual “MWR” usage for morale, welfare, and recreation activities.

#### AMENDMENTS

2004—Pub. L. 108-375 substituted “for buildings constructed at private cost, as authorized by law.” for “for—

“(1) buildings constructed at private cost, as authorized by law; and

“(2) buildings on military reservations authorized by regulation to be used for morale, welfare, and recreational purposes.”

1997—Pub. L. 105-85 renumbered section 2490 of this title as this section.

### § 2869. Conveyance of property at military installations to limit encroachment

(a) CONVEYANCE AUTHORIZED; CONSIDERATION.—

(1) The Secretary concerned may enter into an agreement to convey real property, including any improvements thereon, described in paragraph (2) to any person who agrees, in exchange for the real property, to carry out a land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations.

(2) Paragraph (1) applies with respect to real property under the jurisdiction of the Secretary concerned that—

(A) is located on a military installation that is closed or realigned under a base closure law; or

(B) is located on a military installation not covered by subparagraph (A) and is determined to be excess to the needs of the Department of Defense.

(b) CONDITIONS ON CONVEYANCE AUTHORITY.—The fair market value of the land to be obtained by the Secretary concerned under subsection (a) in exchange for the conveyance of real property by the Secretary under such subsection shall be at least equal to the fair market value of the conveyed real property, as determined by the Secretary. If the fair market value of the land is less than the fair market value of the real property to be conveyed, the recipient of the property shall pay to the United States an amount equal to the difference in the fair market values.

(c) LIMITATION ON USE OF CONVEYANCE AUTHORITY AT INSTALLATIONS CLOSED UNDER BASE CLOSURE LAWS.—The authority under subsection (a)(2)(A) to convey property located on a military installation may only be used to the extent the conveyance is consistent with an approved redevelopment plan for such installation.

(d) ADVANCE NOTICE OF USE OF AUTHORITY.—(1) Notice of the proposed use of the conveyance authority provided by subsection (a) shall be provided in such manner as the Secretary of Defense may prescribe, including publication in the Federal Register and otherwise. When real property located at a military installation is proposed for conveyance by means of a public sale, the Secretary concerned may notify pro-

spective purchasers that consideration for the property may be provided in the manner authorized by such subsection.

(2) The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—

(A) the Secretary submits to Congress notice of the conveyance, including—

(i) a description of the real property to be conveyed by the Secretary under the agreement;

(ii) a description of the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(iii) the amount of any payment to be made under subsection (b) or under section 2684a(d) of this title to equalize the fair market values of the property to be conveyed and the land acquisition to be carried out under the agreement in exchange for the conveyance of the property; and

(B) the waiting period applicable to that notice under paragraph (3) expires.

(3) If the notice submitted under paragraph (2) deals with the conveyance of real property located on a military installation that is closed or realigned under a base closure law or the conveyance of real property under an agreement entered into under section 2684a of this title, the Secretary concerned may enter into the agreement under subsection (a) for the conveyance of the property after a period of 21 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 14 days has elapsed from the date on which a copy of the notice is provided in an electronic medium pursuant to section 480 of this title. In the case of other real property to be conveyed under subsection (a), the Secretary concerned may enter into the agreement only after a period of 60 days has elapsed from the date of receipt of the notice or, if over sooner, a period of 45 days has elapsed from the date on which the electronic copy is provided.

(e) DEPOSIT AND USE OF FUNDS.—The Secretary concerned shall deposit funds received under subsection (b) in the appropriation “Foreign Currency Fluctuations, Construction, Defense”. The funds deposited shall be available, in such amounts as provided in appropriation Acts, for the purpose of paying increased costs of overseas military construction and family housing construction or improvement associated with unfavorable fluctuations in currency exchange rates. The use of such funds for this purpose does not relieve the Secretary concerned from the duty to provide advance notice to Congress under section 2853(c) of this title whenever the Secretary approves an increase in the cost of an overseas project under such section.

(f) SUNSET.—The authority to enter into an agreement under this section shall expire on September 30, 2013.

(g) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of real property conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary concerned.

(h) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such addi-

tional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(Added Pub. L. 108-136, div. B, title XXVIII, §2805(a)(1), Nov. 24, 2003, 117 Stat. 1719; amended Pub. L. 109-364, div. B, title XXVIII, §2811(a)-(f)(1), Oct. 17, 2006, 120 Stat. 2471-2473; Pub. L. 111-84, div. B, title XXVIII, §2804(a)-(d)(1), Oct. 28, 2009, 123 Stat. 2661, 2662.)

#### AMENDMENTS

2009—Pub. L. 111-84, §2804(d)(1), amended section catchline generally. Prior to amendment, catchline read as follows: “Conveyance of property at military installations to support military construction or limit encroachment”.

Subsec. (a)(1). Pub. L. 111-84, §2804(a)(1)(A), struck out subpar. (A) designation before “to carry out”, substituted “real property,” for “real property—”, “to carry out a land acquisition” for “to carry out a military construction project or land acquisition”, and a period for “; or”, and struck out subpar. (B) which read as follows: “to transfer to the Secretary concerned housing that is constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable military family housing, military unaccompanied housing, or both.”

Subsec. (a)(3). Pub. L. 111-84, §2804(a)(1)(B), struck out par. (3) which read as follows: “Subparagraph (B) of paragraph (2) shall apply only during the period beginning on the date of the enactment of the John Warner National Defense Authorization Act for Fiscal Year 2007 and ending on September 30, 2008. Any conveyance of real property described in such subparagraph for which the Secretary concerned has provided the advance public notice required by subsection (d)(1) before the expiration date may be completed after that date.”

Subsec. (b). Pub. L. 111-84, §2804(a)(2), substituted “fair market value of the land” for “fair market value of the military construction, military family housing, or military unaccompanied housing” in two places.

Subsec. (c). Pub. L. 111-84, §2804(a)(3), added subsec. (c) and struck out former subsec. (c) which related to pilot program for use of conveyance authority.

Subsec. (d)(2)(A)(ii), (iii). Pub. L. 111-84, §2804(a)(4), substituted “land acquisition” for “military construction project, land acquisition, military family housing, or military unaccompanied housing”.

Subsec. (e). Pub. L. 111-84, §2804(b), designated par. (3) as entire subsec., substituted “The Secretary concerned shall deposit funds received under subsection (b) in the appropriation ‘Foreign Currency Fluctuations, Construction, Defense’. The funds deposited shall be available” for “The funds deposited under paragraph (2) shall be available”, and struck out pars. (1) and (2), which read as follows:

“(1) Except as provided in paragraph (2), the Secretary concerned may deposit funds received under subsection (b) in the Department of Defense housing funds established under section 2883(a) of this title.

“(2) During the period specified in paragraph (3) of subsection (a), the Secretary concerned shall deposit funds received under subsection (b) in the appropriation ‘Foreign Currency Fluctuations, Construction, Defense’.”

Subsec. (f). Pub. L. 111-84, §2804(c), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to annual reports on conveyances and effect of failure to submit report.

2006—Pub. L. 109-364, §2811(f)(1), substituted “to support military construction or limit encroachment” for “closed or realigned to support military construction” in section catchline.

Subsec. (a). Pub. L. 109-364, §2811(a), (b), designated existing provisions as par. (1), in introductory provisions substituted “described in paragraph (2)” for “located on a military installation that is closed or re-

aligned under a base closure law”, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, in subpar. (A) substituted “land acquisition, including the acquisition of all right, title, and interest or a lesser interest in real property under an agreement entered into under section 2684a of this title to limit encroachments and other constraints on military training, testing, and operations” for “land acquisition”, and added pars. (2) and (3).

Subsec. (d)(1). Pub. L. 109-364, §2811(c)(1), substituted “is proposed for conveyance” for “closed or realigned under the base closure laws is to be conveyed”.

Subsec. (d)(2), (3). Pub. L. 109-364, §2811(c)(2), added pars. (2) and (3) and struck out former par. (2) which read as follows: “The Secretary concerned may not enter into an agreement under subsection (a) for the conveyance of real property until—

“(A) the Secretary submits to Congress notice of the conveyance, including the military construction activities, military family housing, or military unaccompanied housing to be obtained in exchange for the conveyance; and

“(B) a period of 14 days expires beginning on the date on which the notice is submitted.”

Subsec. (e). Pub. L. 109-364, §2811(d), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “The Secretary concerned may deposit funds received under subsection (b) in the Department of Defense housing funds established under section 2883(a) of this title.”

Subsec. (f). Pub. L. 109-364, §2811(e), in heading substituted “Annual Reports; Effect of Failure to Submit” for “Annual Report”, designated existing provisions as par. (1), in introductory provisions substituted “Not later than March 15 of each year, the Secretary of Defense shall submit to Congress a report detailing the following:” for “In the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense shall include a report detailing the following:”, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in subpar. (C) inserted “and of excess real property at military installations” before period at end, and added par. (2).

#### SUBCHAPTER IV—ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING

Sec.	Definitions.
2871.	General authority.
2872.	Utilities and services.
2872a.	Direct loans and loan guarantees.
2873.	Leasing of housing.
2874.	Investments.
2875.	Rental guarantees.
2876.	Differential lease payments.
2877.	Conveyance or lease of existing property and facilities.
2878.	Repealed.]
[2879.	Unit size and type.
2880.	Ancillary supporting facilities.
2881.	Pilot projects for acquisition or construction of military unaccompanied housing.
2881a.	Effect of assignment of members to housing units acquired or constructed under alternative authority.
2882.	Department of Defense Housing Funds.
2883.	Funds for housing allowances of members of the armed forces assigned to certain military family housing units.
2883a.	Reports.
2884.	Oversight and accountability for privatization projects.
2885.	

#### AMENDMENTS

2008—Pub. L. 110-417, div. B, title XXVIII, §2805(a)(2), (e)(2), Oct. 14, 2008, 122 Stat. 4722, 4724, added items 2882 and 2885 and struck out former item 2882 “Assignment of members of the armed forces to housing units”.

2004—Pub. L. 108-375, div. B, title XXVIII, §2805(b)(2), Oct. 28, 2004, 118 Stat. 2122, struck out item 2885 “Expiration of authority”.

2002—Pub. L. 107-314, div. B, title XXVIII, §§2802(b)(3), (c)(2), 2803(a)(2), Dec. 2, 2002, 116 Stat. 2703, 2705, struck out “to be constructed” after “Leasing of housing” in item 2874, struck out item 2879 “Interim leases”, and added item 2881a.

2001—Pub. L. 107-107, div. B, title XXVIII, §2804(b), Dec. 28, 2001, 115 Stat. 1306, added item 2883a.

2000—Pub. L. 106-398, §1 [div. B, title XXVIII, §2805(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-415, added item 2872a.

1999—Pub. L. 106-65, div. B, title XXVIII, §2803(h)(2), Oct. 5, 1999, 113 Stat. 849, added item 2875 and struck out former item 2875 “Investments in nongovernmental entities”.

### § 2871. Definitions

In this subchapter:

(1) The term “ancillary supporting facilities” means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(2) The term “child development center” includes a facility, and the utilities to support such facility, the function of which is to support the daily care of children aged six weeks old through five years old for full-day, part-day, and hourly service.

(3) The term “construction” means the construction of military housing units and ancillary supporting facilities or the improvement or rehabilitation of existing units or ancillary supporting facilities.

(4) The term “contract” includes any contract, lease, or other agreement entered into under the authority of this subchapter.

(5) The term “eligible entity” means any private person, corporation, firm, partnership, company, State or local government, or housing authority of a State or local government that is prepared to enter into a contract as a partner with the Secretary concerned for the construction of military housing units and ancillary supporting facilities.

(6) The term “Fund” means the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund established under section 2883(a) of this title.

(7) The term “military unaccompanied housing” means military housing intended to be occupied by members of the armed forces serving a tour of duty unaccompanied by dependents and transient housing intended to be occupied by members of the armed forces on temporary duty.

(8) The term “United States” includes the Commonwealth of Puerto Rico.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 544; amended Pub. L. 105-261, div. B, title XXVIII, §2803, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 106-65, div. B, title XXVIII, §2803(a), Oct. 5, 1999, 113 Stat. 848; Pub. L. 107-314, div. B, title XXVIII, §2803(b), Dec. 2, 2002, 116 Stat. 2705; Pub. L. 108-136, div. A, title

X, §1043(c)(6), Nov. 24, 2003, 117 Stat. 1612; Pub. L. 109-163, div. B, title XXVIII, §2805(b), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110-417, div. B, title XXVIII, §2805(c), Oct. 14, 2008, 122 Stat. 4723.)

#### AMENDMENTS

2008—Par. (5). Pub. L. 110-417 inserted before period at end “that is prepared to enter into a contract as a partner with the Secretary concerned for the construction of military housing units and ancillary supporting facilities”.

2006—Par. (1). Pub. L. 109-163, §2805(b)(1), inserted “child development centers,” after “day care centers,”.

Par. (2). Pub. L. 109-163, §2805(b)(2), added par. (2).

2003—Par. (2). Pub. L. 108-136 struck out par. (2) which read as follows: “The term ‘base closure law’ means the following:

“(A) Section 2687 of this title.

“(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

“(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).”

2002—Par. (7). Pub. L. 107-314 inserted “and transient housing intended to be occupied by members of the armed forces on temporary duty” before period at end.

1999—Pars. (5) to (8). Pub. L. 106-65 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

1998—Par. (1). Pub. L. 105-261 inserted “facilities to provide or support elementary or secondary education,” after “including”.

### § 2872. General authority

In addition to any other authority provided under this chapter for the acquisition or construction of military family housing or military unaccompanied housing, the Secretary concerned may exercise any authority or any combination of authorities provided under this subchapter in order to provide for the acquisition or construction by eligible entities of the following:

(1) Family housing units on or near military installations within the United States and its territories and possessions.

(2) Military unaccompanied housing units on or near such military installations.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106-65, div. B, title XXVIII, §2803(b), Oct. 5, 1999, 113 Stat. 849.)

#### AMENDMENTS

1999—Pub. L. 106-65 substituted “eligible entities” for “private persons” in introductory provisions.

### § 2872a. Utilities and services

(a) **AUTHORITY TO FURNISH.**—The Secretary concerned may furnish utilities and services referred to in subsection (b) in connection with any military housing acquired or constructed pursuant to the exercise of any authority or combination of authorities under this subchapter if the military housing is located on a military installation.

(b) **COVERED UTILITIES AND SERVICES.**—The utilities and services that may be furnished under subsection (a) are the following:

(1) Electric power.

(2) Steam.

(3) Compressed air.

- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural gas.
- (7) Pest control.
- (8) Snow and ice removal.
- (9) Mechanical refrigeration.
- (10) Telecommunications service.
- (11) Firefighting and fire protection services.
- (12) Police protection services.

(c) REIMBURSEMENT.—(1) The Secretary concerned shall be reimbursed for any utilities or services furnished under subsection (a).

(2) The amount of any cash payment received under paragraph (1) shall be credited to the appropriation or working capital account from which the cost of furnishing the utilities or services concerned was paid. Amounts so credited to an appropriation or account shall be merged with funds in such appropriation or account, and shall be available to the same extent, and subject to the same terms and conditions, as such funds.

(Added Pub. L. 106-398, §1 [div. B, title XXVIII, §2805(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-414; amended Pub. L. 107-314, div. B, title XXVIII, §2802(a), Dec. 2, 2002, 116 Stat. 2703.)

#### AMENDMENTS

2002—Subsec. (b)(11), (12). Pub. L. 107-314 added pars. (11) and (12).

### § 2873. Direct loans and loan guarantees

(a) DIRECT LOANS.—(1) Subject to subsection (c), the Secretary concerned may make direct loans to an eligible entity in order to provide funds to the eligible entity for the acquisition or construction of housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The Secretary concerned shall establish such terms and conditions with respect to loans made under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the period and frequency for repayment of such loans and the obligations of the obligors on such loans upon default.

(b) LOAN GUARANTEES.—(1) Subject to subsection (c), the Secretary concerned may guarantee a loan made to an eligible entity if the proceeds of the loan are to be used by the eligible entity to acquire, or construct housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The amount of a guarantee on a loan that may be provided under paragraph (1) may not exceed the amount equal to the lesser of—

- (A) the amount equal to 80 percent of the value of the project; or
- (B) the amount of the outstanding principal of the loan.

(3) The Secretary concerned shall establish such terms and conditions with respect to guarantees of loans under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the rights and obligations of obligors of such loans and the rights and obligations of the United States with respect to such guarantees.

(c) LIMITATION ON DIRECT LOAN AND GUARANTEE AUTHORITY.—Direct loans and loan guarantees may be made under this section only to the extent that appropriations of budget authority to cover their cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) are made in advance, or authority is otherwise provided in appropriation Acts. If such appropriation or other authority is provided, there may be established a financing account (as defined in section 502(7) of such Act (2 U.S.C. 661a(7))), which shall be available for the disbursement of direct loans or payment of claims for payment on loan guarantees under this section and for all other cash flows to and from the Government as a result of direct loans and guarantees made under this section.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106-65, div. B, title XXVIII, §2803(c), Oct. 5, 1999, 113 Stat. 849.)

#### AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106-65, §2803(c)(1), substituted “an eligible entity” for “persons in the private sector” and “the eligible entity” for “such persons”.

Subsec. (b)(1). Pub. L. 106-65, §2803(c)(2), substituted “an eligible entity” for “any person in the private sector” and “the eligible entity” for “the person”.

### § 2874. Leasing of housing

(a) LEASE AUTHORIZED.—The Secretary concerned may enter into contracts for the lease of housing units that the Secretary determines are suitable for use as military family housing or military unaccompanied housing.

(b) USE OF LEASED UNITS.—The Secretary concerned shall utilize housing units leased under this section as military family housing or military unaccompanied housing, as appropriate.

(c) LEASE TERMS.—A contract under this section may be for any period that the Secretary concerned determines appropriate and may provide for the owner of the leased property to operate and maintain the property.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 107-314, div. B, title XXVIII, §2802(b)(1), (2), Dec. 2, 2002, 116 Stat. 2703.)

#### AMENDMENTS

2002—Pub. L. 107-314, §2802(b)(2), in section catchline struck out “to be constructed” after “Leasing of housing”.

Subsec. (a). Pub. L. 107-314, §2802(b)(1)(B), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “The Secretary concerned may enter into contracts for the lease of military family housing units or military unaccompanied housing units to be constructed under this subchapter.”

Subsecs. (b), (c). Pub. L. 107-314, §2802(b)(1), added subsec. (b) and redesignated former subsec. (b) as (c).

### § 2875. Investments

(a) INVESTMENTS AUTHORIZED.—The Secretary concerned may make investments in an eligible entity carrying out projects for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied housing.

(b) FORMS OF INVESTMENT.—An investment under this section may take the form of an ac-

quisition of a limited partnership interest by the United States, a purchase of stock or other equity instruments by the United States, a purchase of bonds or other debt instruments by the United States, or any combination of such forms of investment.

(c) **LIMITATION ON VALUE OF INVESTMENT.**—(1) The cash amount of an investment under this section in an eligible entity may not exceed an amount equal to 33½ percent of the capital cost (as determined by the Secretary concerned) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(2) If the Secretary concerned conveys land or facilities to an eligible entity as all or part of an investment in the eligible entity under this section, the total value of the investment by the Secretary under this section may not exceed an amount equal to 45 percent of the capital cost (as determined by the Secretary) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(3) In this subsection, the term “capital cost”, with respect to a project for the acquisition or construction of housing, means the total amount of the costs included in the basis of the housing for Federal income tax purposes.

(d) **COLLATERAL INCENTIVE AGREEMENTS.**—The Secretary concerned shall enter into collateral incentive agreements with eligible entities in which the Secretary makes an investment under this section to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the investment.

(e) **CONGRESSIONAL NOTIFICATION REQUIRED.**—Amounts in the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund may be used to make a cash investment under this section in an eligible entity only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the investment to the appropriate committees of Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 105-85, div. B, title XXVIII, §2805, Nov. 18, 1997, 111 Stat. 1991; Pub. L. 106-65, div. B, title XXVIII, §2803(d), (h)(1), Oct. 5, 1999, 113 Stat. 849; Pub. L. 108-136, div. A, title X, §1031(a)(50), Nov. 24, 2003, 117 Stat. 1602.)

#### AMENDMENTS

2003—Subsec. (e). Pub. L. 108-136 inserted before period at end “or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title”.

1999—Pub. L. 106-65, §2803(h)(1), struck out “in nongovernmental entities” after “Investments” in section catchline.

Subsec. (a). Pub. L. 106-65, §2803(d)(1), substituted “an eligible entity” for “nongovernmental entities”.

Subsec. (c). Pub. L. 106-65, §2803(d)(2), substituted “an eligible entity” for “a nongovernmental entity” in pars. (1) and (2) and “the eligible entity” for “the entity” wherever appearing in pars. (1) and (2).

Subsec. (d). Pub. L. 106-65, §2803(d)(3), substituted “eligible” for “nongovernmental”.

Subsec. (e). Pub. L. 106-65, §2803(d)(4), substituted “an eligible entity” for “a nongovernmental entity”.

1997—Subsec. (e). Pub. L. 105-85 added subsec. (e).

#### § 2876. Rental guarantees

The Secretary concerned may enter into agreements with eligible entities that acquire or construct military family housing units or military unaccompanied housing units under this subchapter in order to assure—

(1) the occupancy of such units at levels specified in the agreements; or

(2) rental income derived from rental of such units at levels specified in the agreements.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 106-65, div. B, title XXVIII, §2803(e), Oct. 5, 1999, 113 Stat. 849.)

#### AMENDMENTS

1999—Pub. L. 106-65 substituted “eligible entities” for “private persons” in introductory provisions.

#### § 2877. Differential lease payments

Pursuant to an agreement entered into by the Secretary concerned and a lessor of military family housing or military unaccompanied housing to members of the armed forces, the Secretary may pay the lessor an amount in addition to the rental payments for the housing made by the members as the Secretary determines appropriate to encourage the lessor to make the housing available to members of the armed forces as military family housing or as military unaccompanied housing.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended Pub. L. 106-65, div. B, title XXVIII, §2803(f), Oct. 5, 1999, 113 Stat. 849.)

#### AMENDMENTS

1999—Pub. L. 106-65 substituted “a lessor” for “a private lessor”.

#### § 2878. Conveyance or lease of existing property and facilities

(a) **CONVEYANCE OR LEASE AUTHORIZED.**—The Secretary concerned may convey or lease property or facilities (including ancillary supporting facilities) to eligible entities for purposes of using the proceeds of such conveyance or lease to carry out activities under this subchapter.

(b) **INAPPLICABILITY TO PROPERTY AT INSTALLATION APPROVED FOR CLOSURE.**—The authority of this section does not apply to property or facilities located on or near a military installation approved for closure under a base closure law.

(c) **COMPETITIVE PROCESS.**—The Secretary concerned shall ensure that the time, method, and terms and conditions of the reconveyance or lease of property or facilities under this section from the eligible entity permit full and free competition consistent with the value and nature of the property or facilities involved.

(d) **TERMS AND CONDITIONS.**—(1) The conveyance or lease of property or facilities under this

section shall be for such consideration and upon such terms and conditions as the Secretary concerned considers appropriate for the purposes of this subchapter and to protect the interests of the United States.

(2) As part or all of the consideration for a conveyance or lease under this section, the purchaser or lessor (as the case may be) shall enter into an agreement with the Secretary to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or sublease of a reasonable number of the housing units covered by the conveyance or lease, as the case may be, or in the lease of other suitable housing units made available by the purchaser or lessee.

(e) **INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS.**—The conveyance or lease of property or facilities under this section shall not be subject to the following provisions of law:

(1) Section 2667 of this title.

(2) Subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(3) Section 1302 of title 40.

(4) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended Pub. L. 105-85, div. A, title X, §1073(a)(60), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106-65, div. B, title XXVIII, §2803(g), Oct. 5, 1999, 113 Stat. 849; Pub. L. 107-107, div. A, title X, §1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107-217, §3(b)(23), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 110-417, div. B, title XXVIII, §2805(d), Oct. 14, 2008, 122 Stat. 4723; Pub. L. 111-350, §5(b)(50), Jan. 4, 2011, 124 Stat. 3846.)

#### AMENDMENTS

2011—Subsec. (e)(2). Pub. L. 111-350, which directed substitution of “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” for “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)” in subsec. (d)(2), was executed by making the substitution in subsec. (e)(2) to reflect the probable intent of Congress and the amendment by Pub. L. 110-417. See 2008 Amendment note below.

2008—Subsecs. (c) to (e). Pub. L. 110-417 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

2002—Subsec. (d)(2). Pub. L. 107-217, §3(b)(23)(A), substituted “Subtitle I of title 40 and title III of the” for “The” and “(41 U.S.C. 251 et seq.)” for “(40 U.S.C. 471 et seq.)”.

Subsec. (d)(3). Pub. L. 107-217, §3(b)(23)(B), substituted “Section 1302 of title 40” for “Section 321 of the Act of June 30, 1932 (commonly known as the Economy Act) (40 U.S.C. 303b)”.

2001—Subsec. (d)(4). Pub. L. 107-107 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

1999—Subsec. (a). Pub. L. 106-65 substituted “eligible entities” for “private persons”.

1997—Subsec. (d)(4). Pub. L. 105-85 substituted “11411” for “11401”.

**[§ 2879. Repealed. Pub. L. 107-314, div. B, title XXVIII, §2802(c)(1), Dec. 2, 2002, 116 Stat. 2703]**

Section, added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 547, related to interim

leases of completed units pending completion of a project to acquire or construct military family housing units or military unaccompanied housing units.

#### § 2880. Unit size and type

(a) **CONFORMITY WITH SIMILAR HOUSING UNITS IN LOCALE.**—The Secretary concerned shall ensure that the room patterns and floor areas of military family housing units and military unaccompanied housing units acquired or constructed under this subchapter are generally comparable to the room patterns and floor areas of similar housing units in the locality concerned.

(b) **INAPPLICABILITY OF LIMITATIONS ON SPACE BY PAY GRADE.**—Sections 2826 and 2856 of this title shall not apply to military family housing or military unaccompanied housing units acquired or constructed under this subchapter.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 108-136, div. B, title XXVIII, §2806, Nov. 24, 2003, 117 Stat. 1722; Pub. L. 109-364, div. B, title XXVIII, §2807(b), Oct. 17, 2006, 120 Stat. 2469.)

#### AMENDMENTS

2006—Subsec. (b). Pub. L. 109-364 substituted “Sections 2826 and 2856” for “(1) Section 2826”, inserted “or military unaccompanied housing” after “military family housing”, and struck out par. (2) which read as follows: “The regulations prescribed under section 2856 of this title shall not apply to any military unaccompanied housing unit acquired or constructed under this subchapter.”

2003—Subsec. (b)(2). Pub. L. 108-136 struck out “unless the unit is located on a military installation” before period at end.

#### § 2881. Ancillary supporting facilities

(a) **AUTHORITY TO ACQUIRE OR CONSTRUCT.**—Any project for the acquisition or construction of military family housing units or military unaccompanied housing units under this subchapter may include the acquisition or construction of ancillary supporting facilities for the housing units concerned.

(b) **RESTRICTION.**—A project referred to in subsection (a) may not include the acquisition or construction of an ancillary supporting facility (other than a child development center) if, as determined by the Secretary concerned, the facility is to be used for providing merchandise or services in direct competition with—

(1) the Army and Air Force Exchange Service;

(2) the Navy Exchange Service Command;

(3) a Marine Corps exchange;

(4) the Defense Commissary Agency; or

(5) any nonappropriated fund activity of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 106-65, div. B, title XXVIII, §2804, Oct. 5, 1999, 113 Stat. 849; Pub. L. 109-163, div. B, title XXVIII, §2805(a), Jan. 6, 2006, 119 Stat. 3507.)

#### AMENDMENTS

2006—Subsec. (b). Pub. L. 109-163 inserted “(other than a child development center)” after “ancillary supporting facility” in introductory provisions.

1999—Pub. L. 106-65 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

#### CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109-163, div. B, title XXVIII, §2805(c), Jan. 6, 2006, 119 Stat. 3507, provided that: “Nothing in the amendment made by subsection (a) [amending this section] may be construed to alter any law and regulation applicable to the operation of a child development center, as defined in section 2871(2) of title 10, United States Code.”

#### § 2881a. Pilot projects for acquisition or construction of military unaccompanied housing

(a) **PILOT PROJECTS AUTHORIZED.**—The Secretary of the Navy may carry out not more than three pilot projects under the authority of this section or another provision of this subchapter to use the private sector for the acquisition or construction of military unaccompanied housing in the United States, including any territory or possession of the United States.

(b) **TREATMENT OF HOUSING; ASSIGNMENT OF MEMBERS.**—The Secretary of the Navy may assign members of the armed forces without dependents to housing units acquired or constructed under the pilot projects, and such housing units shall be considered as quarters of the United States or a housing facility under the jurisdiction of the Secretary for purposes of section 403 of title 37.

(c) **BASIC ALLOWANCE FOR HOUSING.**—(1) The Secretary of Defense may prescribe and, under section 403(n) of title 37, pay for members of the armed forces without dependents in privatized housing acquired or constructed under the pilot projects higher rates of partial basic allowance for housing than the rates authorized under paragraph (2) of such section.

(2) The partial basic allowance for housing paid for a member at a higher rate under this subsection may be paid directly to the private sector source of the housing to whom the member is obligated to pay rent or other charge for residing in such housing if the private sector source credits the amount so paid against the amount owed by the member for the rent or other charge.

(d) **FUNDING.**—(1) The Secretary of the Navy shall use the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under the pilot projects.

(2) Subject to 30 days prior notification to the appropriate committees of Congress, such additional amounts as the Secretary of Defense considers necessary may be transferred to the Department of Defense Military Unaccompanied Housing Improvement Fund from amounts appropriated for construction of military unaccompanied housing in military construction accounts. The amounts so transferred shall be merged with and be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund.

(e) **REPORTS.**—(1) The Secretary of the Navy shall transmit to the appropriate committees of Congress a report describing—

(A) each contract for the acquisition of military unaccompanied housing that the Secretary proposes to solicit under the pilot projects;

(B) each conveyance or lease proposed under section 2878 of this title in furtherance of the pilot projects; and

(C) the proposed partial basic allowance for housing rates for each contract as they vary by grade of the member and how they compare to basic allowance for housing rates for other contracts written under the authority of the pilot programs.

(2) The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation. The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(f) **EXPIRATION.**—The authority of the Secretary of the Navy to enter into a contract under the pilot programs shall expire September 30, 2009.

(Added Pub. L. 107-314, div. B, title XXVIII, §2803(a)(1), Dec. 2, 2002, 116 Stat. 2703; amended Pub. L. 109-163, div. A, title X, §1056(c)(10), Jan. 6, 2006, 119 Stat. 3440; Pub. L. 109-364, div. B, title XXVIII, §2812, Oct. 17, 2006, 120 Stat. 2473; Pub. L. 111-383, div. B, title XXVIII, §2803(f), Jan. 7, 2011, 124 Stat. 4459.)

#### AMENDMENTS

2011—Subsec. (e)(2). Pub. L. 111-383 inserted before period at end “or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title”.

2006—Subsecs. (d)(2), (e)(2). Pub. L. 109-364, §2812(a), substituted “30 days” for “90 days”.

Subsec. (f). Pub. L. 109-364, §2812(b), substituted “2009” for “2007”.

Pub. L. 109-163 substituted “The” for “Notwithstanding section 2885 of this title, the”.

#### § 2882. Effect of assignment of members to housing units acquired or constructed under alternative authority

(a) **TREATMENT AS QUARTERS OF THE UNITED STATES.**—Except as provided in subsection (b), housing units acquired or constructed under this subchapter shall be considered as quarters of the United States or a housing facility under the jurisdiction of a uniformed service for purposes of section 403 of title 37.

(b) **AVAILABILITY OF BASIC ALLOWANCE FOR HOUSING.**—A member of the armed forces who is assigned to a housing unit acquired or constructed under this subchapter that is not owned or leased by the United States shall be entitled to a basic allowance for housing under section 403 of title 37.

(c) **LEASE PAYMENTS THROUGH PAY ALLOTMENTS.**—The Secretary concerned may require members of the armed forces who lease housing in housing units acquired or constructed under this subchapter to make lease payments for such housing pursuant to allotments of the pay of such members under section 701 of title 37.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended



Pub. L. 105–85, div. A, title VI, § 603(d)(2)(C), Nov. 18, 1997, 111 Stat. 1783; Pub. L. 110–417, div. B, title XXVIII, § 2805(e)(1), Oct. 14, 2008, 122 Stat. 4723.)

#### AMENDMENTS

2008—Pub. L. 110–417 amended section generally. Prior to amendment, section related to assignment of members of the armed forces to housing units by the Secretary concerned, treatment of such housing as quarters of the United States, entitlement to a basic allowance for housing, and making of lease payments through pay allotments.

1997—Subsec. (b)(1). Pub. L. 105–85, § 603(d)(2)(C)(i), substituted “section 403” for “section 403(b)”.

Subsec. (b)(2). Pub. L. 105–85, § 603(d)(2)(C)(ii), substituted “basic allowance for housing under section 403 of title 37” for “basic allowance for quarters under section 403 of title 37 and, if in a high housing cost area, a variable housing allowance under section 403a of that title”.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a note under section 5561 of Title 5, Government Organization and Employees.

### § 2883. Department of Defense Housing Funds

(a) ESTABLISHMENT.—There are hereby established on the books of the Treasury the following accounts:

(1) The Department of Defense Family Housing Improvement Fund.

(2) The Department of Defense Military Unaccompanied Housing Improvement Fund.

(b) COMMINGLING OF FUNDS PROHIBITED.—(1) The Secretary of Defense shall administer each Fund separately.

(2) Amounts in the Department of Defense Family Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military family housing.

(3) Amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military unaccompanied housing.

(c) CREDITS TO FUNDS.—(1) There shall be credited to the Department of Defense Family Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition, improvement, or construction of military family housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military family housing.

(D) Income derived from any activities under this subchapter with respect to military family housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(F) Any amounts that the Secretary concerned transfers to that Fund pursuant to section 2869 of this title.

(G) Subject to subsection (f), any amounts that the Secretary of Defense transfers to that Fund from amounts in the Department of Defense Base Closure Account 2005.

(2) There shall be credited to the Department of Defense Military Unaccompanied Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military unaccompanied housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military unaccompanied housing.

(D) Income derived from any activities under this subchapter with respect to military unaccompanied housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(F) Any amounts that the Secretary concerned transfers to that Fund pursuant to section 2869 of this title.

(G) Subject to subsection (f), any amounts that the Secretary of Defense transfers to that Fund from amounts in the Department of Defense Base Closure Account 2005.

(d) USE OF AMOUNTS IN FUNDS.—(1) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Family Housing Improvement Fund to carry out activities under this subchapter with respect to military family housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(2) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund to carry

out activities under this subchapter with respect to military unaccompanied housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(3) Amounts made available under this subsection shall remain available until expended. The Secretary of Defense may transfer amounts made available under this subsection to the Secretaries of the military departments to permit such Secretaries to carry out the activities for which such amounts may be used.

(e) LIMITATION ON OBLIGATIONS.—(1) The Secretary may not incur an obligation under a contract or other agreement entered into under this subchapter in excess of the unobligated balance, at the time the contract is entered into, of the Fund required to be used to satisfy the obligation.

(2) The Funds established under subsection (a) shall be the sole source of funds for activities carried out under this subchapter.

(f) NOTIFICATION REQUIRED FOR TRANSFERS.—A transfer of appropriated amounts to a Fund under subparagraph (B) or (G) of paragraph (1) or subparagraph (B) or (G) of paragraph (2) of subsection (c) may be made only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the transfer to the appropriate committees of Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title. In addition, the notice required in connection with a transfer under subparagraph (G) of paragraph (1) or subparagraph (G) of paragraph (2) shall include a certification that the amounts to be transferred from the Department of Defense Base Closure Account 2005 were specified in the conference report to accompany the most recent Military Construction Authorization Act.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 104-201, div. B, title XXVIII, §2804, Sept. 23, 1996, 110 Stat. 2788; Pub. L. 106-65, div. B, title XXVIII, §2802(b), Oct. 5, 1999, 113 Stat. 848; Pub. L. 108-136, div. A, title X, §1031(a)(51), div. B, title XXVIII, §2805(c), Nov. 24, 2003, 117 Stat. 1603, 1721; Pub. L. 108-375, div. B, title XXVIII, §2805(a), Oct. 28, 2004, 118 Stat. 2122; Pub. L. 109-163, div. B, title XXVIII, §2806(a), (b), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110-181, div. B, title XXVII, §2705, Jan. 28, 2008, 122 Stat. 533.)

#### AMENDMENTS

2008—Subsec. (c)(1)(G). Pub. L. 110-181, §2705(a)(1), added subpar. (G).

Subsec. (c)(2)(G). Pub. L. 110-181, §2705(a)(2), added subpar. (G).

Subsec. (f). Pub. L. 110-181, §2705(b), substituted “subparagraph (B) or (G) of paragraph (1) or subparagraph (B) or (G) of paragraph (2)” for “paragraph (1)(B) or (2)(B)” and inserted at end “In addition, the notice re-

quired in connection with a transfer under subparagraph (G) of paragraph (1) or subparagraph (G) of paragraph (2) shall include a certification that the amounts to be transferred from the Department of Defense Base Closure Account 2005 were specified in the conference report to accompany the most recent Military Construction Authorization Act.”

2006—Subsec. (c)(1)(B). Pub. L. 109-163, §2806(b), substituted “acquisition, improvement, or construction” for “acquisition or construction”.

Subsec. (e). Pub. L. 109-163, §2806(a), designated existing provisions as par. (1) and added par. (2).

2004—Subsec. (g). Pub. L. 108-375 struck out heading and text of subsec. (g). Text read as follows: “The total value in budget authority of all contracts and investments undertaken using the authorities provided in this subchapter shall not exceed—

“(1) \$850,000,000 for the acquisition or construction of military family housing; and

“(2) \$150,000,000 for the acquisition or construction of military unaccompanied housing.”

2003—Subsec. (c)(1)(F). Pub. L. 108-136, §2805(c)(1), added subpar. (F).

Subsec. (c)(2)(F). Pub. L. 108-136, §2805(c)(2), added subpar. (F).

Subsec. (f). Pub. L. 108-136, §1031(a)(51), inserted before period at end “or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notice and justification is provided in an electronic medium pursuant to section 480 of this title”.

1999—Subsec. (c)(1)(E). Pub. L. 106-65, §2802(b)(1), added subpar. (E).

Subsec. (c)(2)(E). Pub. L. 106-65, §2802(b)(2), added subpar. (E).

1996—Subsec. (d)(1), (2). Pub. L. 104-201 inserted at end “The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.”

#### § 2883a. Funds for housing allowances of members of the armed forces assigned to certain military family housing units

(a) AUTHORITY TO TRANSFER FUNDS TO COVER HOUSING ALLOWANCES.—During the fiscal year in which a contract is awarded for the acquisition or construction of military family housing units under this subchapter that are not to be owned by the United States, the Secretary of Defense may transfer the amount determined under subsection (b) with respect to such housing from appropriations available for support of military housing for the armed force concerned for that fiscal year to appropriations available for pay and allowances of military personnel of that same armed force for that same fiscal year.

(b) AMOUNT TRANSFERRED.—The total amount authorized to be transferred under subsection (a) in connection with a contract under this subchapter may not exceed an amount equal to any additional amounts payable during the fiscal year in which the contract is awarded to members of the armed forces assigned to the acquired or constructed housing units as basic allowance for housing under section 403 of title 37 that would not otherwise have been payable to such members if not for assignment to such housing units.

(c) TRANSFERS SUBJECT TO APPROPRIATIONS.—The transfer of funds under the authority of subsection (a) is limited to such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 107-107, div. B, title XXVIII, §2804(a), Dec. 28, 2001, 115 Stat. 1305.)

**§ 2884. Reports**

(a) **PROJECT REPORTS.**—(1) The Secretary of Defense shall transmit to the appropriate committees of Congress a report describing—

(A) each contract for the acquisition or construction of family housing units or unaccompanied housing units that the Secretary proposes to solicit under this subchapter; and

(B) each conveyance or lease proposed under section 2878 of this title.

(2) For each proposed contract, conveyance, or lease described in paragraph (1), the report required by such paragraph shall include the following:

(A) A description of the contract, conveyance, or lease, including a summary of the terms of the contract, conveyance, or lease.

(B) A description of the authorities to be utilized in entering into the contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease, including a justification of the intended method of participation.

(C) A statement of the scored cost of the contract, conveyance, or lease, as determined by the Office of Management and Budget.

(D) A statement of the United States funds required for the contract, conveyance, or lease and a description of the source of such funds, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred to the Funds established under section 2883 of this title in order to finance the contract, conveyance, or lease.

(E) An economic assessment of the life cycle costs of the contract, conveyance, or lease, including an estimate of the amount of United States funds that would be paid over the life of the contract, conveyance, or lease from amounts derived from payments of government allowances, including the basic allowance for housing under section 403 of title 37, if the housing affected by the project were fully occupied by military personnel over the life of the contract, conveyance, or lease.

(3)(A) In the case of a contract described in paragraph (1) proposed to be entered into with a private party, the report shall specify whether the contract will or may include a guarantee (including the making of mortgage or rental payments) by the Secretary to the private party in the event of—

(i) the closure or realignment of the installation for which housing will be provided under the contract;

(ii) a reduction in force of units stationed at such installation; or

(iii) the extended deployment of units stationed at such installation.

(B) If the contract will or may include such a guarantee, the report shall also—

(i) describe the nature of the guarantee; and

(ii) assess the extent and likelihood, if any, of the liability of the United States with respect to the guarantee.

(4) The report shall be submitted not later than 30 days before the date on which the Sec-

retary issues the contract solicitation or offers the conveyance or lease or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(b) **ANNUAL REPORTS.**—The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 the following:

(1) A separate report on the expenditures and receipts during the preceding fiscal year covering each of the Funds established under section 2883 of this title, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred and the privatization projects or contracts to which those funds were transferred. Each report shall also include, for each military department or defense agency, a description of all funds to be transferred to such Funds for the current fiscal year and the next fiscal year.

(2) A methodology for evaluating the extent and effectiveness of the use of the authorities under this subchapter during such preceding fiscal year, and such recommendations as the Secretary considers necessary for improving the extent and effectiveness of the use of such authorities in the future.

(3) A review of activities of the Secretary under this subchapter during such preceding fiscal year, shown for military family housing, military unaccompanied housing, dual military family housing and military unaccompanied housing, and ancillary supporting facilities.

(4) If a contract for the acquisition or construction of military family housing, military unaccompanied housing, or dual military family housing and military unaccompanied housing entered into during the preceding fiscal year did not include the acquisition or construction of the types of ancillary supporting facilities specifically referred to in section 2871(1) of this title, a explanation of the reasons why such ancillary supporting facilities were not included.

(5) A report setting forth, by armed force—

(A) an estimate of the amounts of basic allowance for housing under section 403 of title 37 that will be paid, during the current fiscal year and the fiscal year for which the budget is submitted, to members of the armed forces living in housing provided under the authorities in this subchapter; and

(B) the number of units of military family housing and military unaccompanied housing upon which the estimate under subparagraph (A) for the current fiscal year and the next fiscal year is based.

(6) A description of the Secretary's plans for housing privatization activities under this subchapter: (A) during the fiscal year for which the budget is submitted; and (B) during the period covered by the then-current future-years defense plan under section 221 of this title.

(7) A report on best practices for the execution of housing privatization initiatives, including—

(A) effective means to track and verify proper performance, schedule, and cash flow;

(B) means of overseeing the actions of bondholders to properly monitor construction progress and construction draws;

(C) effective structuring of transactions to ensure the United States Government has adequate abilities to oversee project owner performance;

(D) ensuring that notices to proceed on new work are not issued until proper bonding is in place; and

(E) such other topics that are identified as pertinent by the Department of Defense.

(8) A report identifying each family housing unit acquired or constructed under this subchapter that is used, or intended to be used, as quarters for a general officer or flag officer and for which the total operation, maintenance, and repair costs for the unit exceeded \$50,000. For each housing unit so identified, the report shall also include the total of such operation, maintenance, and repair costs.

(Added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 550; amended Pub. L. 108-136, div. B, title XXVIII, §2807, Nov. 24, 2003, 117 Stat. 1722; Pub. L. 108-375, div. B, title XXVIII, §2806, Oct. 28, 2004, 118 Stat. 2122; Pub. L. 109-163, div. B, title XXVIII, §2806(c), Jan. 6, 2006, 119 Stat. 3507; Pub. L. 110-417, div. B, title XXVIII, §2805(b), (f), Oct. 14, 2008, 122 Stat. 4723, 4724; Pub. L. 111-383, div. A, title X, §1075(h)(6), div. B, title XXVIII, §2803(g), Jan. 7, 2011, 124 Stat. 4377, 4459.)

#### AMENDMENTS

2011—Subsec. (a)(4). Pub. L. 111-383, §2803(g), inserted before period at end “or, if earlier, a period of 20 days has elapsed from the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title”.

Subsec. (b)(1). Pub. L. 111-383, §1075(h)(6), made technical correction to directory language of Pub. L. 109-163, §2806(c)(2)(A). See 2006 Amendment note below.

2008—Subsec. (b)(7). Pub. L. 110-417, §2805(b), added par. (7).

Subsec. (b)(8). Pub. L. 110-417, §2805(f), added par. (8).  
2006—Subsec. (a)(2)(D). Pub. L. 109-163, §2806(c)(1), inserted before period “, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred to the Funds established under section 2883 of this title in order to finance the contract, conveyance, or lease”.

Subsec. (b)(1). Pub. L. 109-163, §2806(c)(2)(B), (C), substituted “covering each of the Funds” for “covering the Funds” and inserted before period at end “, including a description of the specific construction, acquisition, or improvement projects from which funds were transferred and the privatization projects or contracts to which those funds were transferred. Each report shall also include, for each military department or defense agency, a description of all funds to be transferred to such Funds for the current fiscal year and the next fiscal year”.

Pub. L. 109-163, §2806(c)(2)(A), as amended by Pub. L. 111-383, §1075(h)(6), substituted “A separate report” for “A report”.

2004—Subsec. (a)(2). Pub. L. 108-375, §2806(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation.”

Subsec. (b)(5), (6). Pub. L. 108-375, §2806(b), added par. (5) and redesignated former par. (5) as (6).

2003—Subsec. (a)(2) to (4). Pub. L. 108-136, §2807(a), designated second sentence of par. (2) as par. (4) and added par. (3).

Subsec. (b)(2). Pub. L. 108-136, §2807(b)(1), inserted before period at end “, and such recommendations as the Secretary considers necessary for improving the extent and effectiveness of the use of such authorities in the future”.

Subsec. (b)(3) to (5). Pub. L. 108-136, §2807(b)(2), added pars. (3) to (5) and struck out former par. (3) which read as follows: “A description of the objectives of the Department of Defense for providing military family housing and military unaccompanied housing for members of the armed forces.”

#### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title X, §1075(h), Jan. 7, 2011, 124 Stat. 4377, provided that amendment by section 1075(h)(6) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109-163 as enacted.

#### FINAL REPORT

Pub. L. 104-106, div. B, title XXVIII, §2801(b), Feb. 10, 1996, 110 Stat. 551, provided that, not later than Mar. 1, 2000, the Secretary of Defense was to submit to the congressional defense committees a report on the use by the Secretary of Defense and the Secretaries of the military departments of the authorities provided by subchapter IV of chapter 169 of this title.

### § 2885. Oversight and accountability for privatization projects

(a) OVERSIGHT AND ACCOUNTABILITY MEASURES.—Each Secretary concerned shall prescribe regulations to effectively oversee and manage military housing privatization projects carried out under this subchapter. The regulations shall include the following requirements for each privatization project:

(1) The installation asset manager shall conduct monthly site visits and provide quarterly reports on the progress of the construction or renovation of the housing units. The reports shall be submitted quarterly to the assistant secretary for installations and environment of the respective military department.

(2) The installation asset manager, and, as applicable, the resident construction manager, privatization asset manager, bondholder representative, project owner, developer, general contractor, and construction consultant for the project shall conduct meetings to ensure that the construction or renovation of the units meets performance and schedule requirements and that appropriate operating and ground lease agreements are in place and adhered to.

(3) If a project is 90 days or more behind schedule or otherwise appears to be substantially failing to adhere to the obligations or milestones under the contract, the assistant secretary for installations and environment of the respective military department shall submit a notice of deficiency to the Deputy Under Secretary of Defense (Installations and Environment), the Secretary concerned, the managing member, and the trustee for the project.

(4)(A) Not later than 15 days after the submittal of a notice of deficiency under paragraph (3), the Secretary concerned or designated representative shall submit to the project owner, developer, or general contrac-

tor responsible for the project a summary of deficiencies related to the project.

(B) If the project owner, developer, or general contractor responsible for the privatization project is unable, within 60 days after receiving a notice of deficiency under subparagraph (A), to make progress on the issues outlined in such notice, the Secretary concerned shall notify the congressional defense committees of the status of the project, and shall provide a recommended course of action to correct the problems.

(b) **REQUIRED QUALIFICATIONS.**—The Secretary concerned or designated representative shall ensure that the project owner, developer, or general contractor that is selected for each military housing privatization initiative project has construction experience commensurate with that required to complete the project.

(c) **BONDING LEVELS.**—The Secretary concerned shall ensure that the project owner, developer, or general contractor responsible for a military housing privatization initiative project has sufficient payment and performance bonds or suitable instruments in place for each phase of a construction or renovation portion of the project to ensure successful completion of the work in amounts as agreed to in the project's legal documents, but in no case less than 50 percent of the total value of the active phases of the project, prior to the commencement of work for that phase.

(d) **REPORTING OF EFFORTS TO SELECT SUCCESSOR IN EVENT OF DEFAULT.**—In the event a military housing privatization initiative project enters into default, the assistant secretary for installations and environment of the respective military department shall submit a report to the congressional defense committees every 90 days detailing the status of negotiations to award the project to a new project owner, developer, or general contractor.

(e) **EFFECT OF NOTICES OF DEFICIENCY ON CONTRACTORS AND AFFILIATED ENTITIES.**—(1) The Secretary concerned shall keep a record of all plans of action or notices of deficiency issued to a project owner, developer, or general contractor under subsection (a)(4), including the identity of each parent, subsidiary, affiliate, or other controlling entity of such owner, developer, or contractor.

(2) Each military department shall consult all records maintained under paragraph (1) when reviewing the past performance of owners, developers, and contractors in the bidding process for a contract or other agreement for a military housing privatization initiative project.

(Added Pub. L. 110-417, div. B, title XXVIII, §2805(a)(1), Oct. 14, 2008, 122 Stat. 4721.)

#### PRIOR PROVISIONS

A prior section 2885, added Pub. L. 104-106, div. B, title XXVIII, §2801(a)(1), Feb. 10, 1996, 110 Stat. 551; amended Pub. L. 105-85, div. A, title X, §1073(a)(61), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106-398, §1 [div. B, title XXVIII, §2806], Oct. 30, 2000, 114 Stat. 1654, 1654A-415; Pub. L. 107-107, div. B, title XXVIII, §2805, Dec. 28, 2001, 115 Stat. 1306, related to expiration of authority to enter into a contract under this subchapter, prior to repeal by Pub. L. 108-375, div. B, title XXVIII, §2805(b)(1), Oct. 28, 2004, 118 Stat. 2122.

#### [CHAPTER 171—REPEALED]

[§§ 2891, 2892. Repealed. Pub. L. 104-106, div. A, title X, §1061(b)(1), Feb. 10, 1996, 110 Stat. 442]

Section 2891, added Pub. L. 100-456, div. A, title III, §342(a)(1), Sept. 29, 1988, 102 Stat. 1959; amended Pub. L. 102-484, div. A, title III, §372, Oct. 23, 1992, 106 Stat. 2384, required Secretary of Defense to submit to Congress for each of fiscal years 1992, 1993, and 1994, a report regarding security and control of Department of Defense supplies.

Section 2892, added Pub. L. 100-456, div. A, title III, §342(a)(1), Sept. 29, 1988, 102 Stat. 1960, directed Secretary of Defense to require investigations of discrepancies in accounting for Department supplies and to separate offices ordering supplies from offices receiving supplies.

#### CHAPTER 172—STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM

Sec. 2901.	Strategic Environmental Research and Development Program.
2902.	Strategic Environmental Research and Development Program Council.
2903.	Executive Director.
2904.	Strategic Environmental Research and Development Program Scientific Advisory Board.

#### § 2901. Strategic Environmental Research and Development Program

(a) The Secretary of Defense shall establish a program to be known as the “Strategic Environmental Research and Development Program”.

(b) The purposes of the program are as follows:

(1) To address environmental matters of concern to the Department of Defense and the Department of Energy through support for basic and applied research and development of technologies that can enhance the capabilities of the departments to meet their environmental obligations.

(2) To identify research, technologies, and other information developed by the Department of Defense and the Department of Energy for national defense purposes that would be useful to governmental and private organizations involved in the development of energy technologies and of technologies to address environmental restoration, waste minimization, hazardous waste substitution, and other environmental concerns, and to share such research, technologies, and other information with such governmental and private organizations.

(3) To furnish other governmental organizations and private organizations with data, enhanced data collection capabilities, and enhanced analytical capabilities for use by such organizations in the conduct of environmental research, including research concerning global environmental change.

(4) To identify technologies developed by the private sector that are useful for Department of Defense and Department of Energy defense activities concerning environmental restoration, hazardous and solid waste minimization and prevention, hazardous material substitution, and provide for the use of such technologies in the conduct of such activities.

(Added Pub. L. 101-510, div. A, title XVIII, §1801(a)(1), Nov. 5, 1990, 104 Stat. 1751.)